

# DRAFT AIA® Document A101® – 2017

## Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

**AGREEMENT** made as of the « » day of « » in the year « »  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

« The Town of Northbridge »  
« 7 Main Street »  
« Whitinsville, MA 01588 »  
« (508) 234-2095 »

and the Contractor:  
(Name, legal status, address and other information)

« »  
« »  
« »  
« »

for the following Project:  
(Name, location and detailed description)

« Church Avenue Reconstruction – Phase 1 »  
« Church Avenue »  
« Northbridge, MA 01534 »

The Owner's Project Manager:  
(Name, legal status, address and other information)

« Turning Point Engineering »  
« P.O. Box 757 »  
« Sutton, MA 01590 »  
« (617) 312-1678 »

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## EXHIBIT A INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in and reasonably inferable from the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

☐ The date of this Agreement.

☒ A date set forth in a notice to proceed issued by the Owner.

☐ Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

☐

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

#### § 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

[ « » ] Not later than « » ( « » ) calendar days from the date of commencement of the Work.

[ « » ] By the following date: « »

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be « » (\$ « » ), subject to additions and deductions as provided in the Contract Documents.

#### § 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item

Price

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item

Price

Conditions for Acceptance

§ 4.3 Allowances, if any, included in the Contract Sum:  
(Identify each allowance.)

Item

Price

#### § 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Unit Prices are set forth in the Unit Price Form submitted with the Contractor's bids.

Refer to AIA document A201 00 72 00 General Conditions of the Contract for Construction (2017 Edition) for Unit Price Forms and Conditions,

Item

Units and Limitations

Price per Unit (\$0.00)

#### § 4.5 Liquidated damages, if any:

*(Insert terms and conditions for liquidated damages, if any.)*

« One Thousand Five Hundred US Dollars (\$1,500.00) per day in accordance with the provisions of AIA A201 General Conditions »

**§ 4.6 Other:**

*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*

« »

**ARTICLE 5 PAYMENTS**

**§ 5.1 Progress Payments**

**§ 5.1.1** Based upon Applications for Payment submitted to the Owner's Project Manager by the Contractor and Certificates for Payment issued by the Owner's Project Manager, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

**§ 5.1.3** Provided that an Application for Payment is received by the Owner's Project Manager not later than the « last » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the « 15th » day of the

« following » month. If an Application for Payment is received by the Owner's Project Manager after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « fifteen » ( « 15 » ) days after the Owner's Project Manager receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Owner's Project Manager may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.5** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.6** In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.1** The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Owner's Project Manager determines, in the Owner's Project Manager's professional judgment, to be reasonably justified.

**§ 5.1.6.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Owner's Project Manager has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

- .4 For Work performed or defects discovered since the last payment application, any amount for which the Owner's Project Manager may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

#### § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

« 5% »

§ 5.1.7.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

« »

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the Work, insert including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

« »

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

« »

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

#### § 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract and has satisfied all conditions for final payment set forth in the contract documents except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Owner's Project Manager.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Owner's Project Manager's final Certificate for Payment, or as follows:

« »

#### § 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

« » % « »

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Owner's Project Manager will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Owner's Project Manager.)

« »

« »

« »

Document A201-2017, the

### § 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[ ☒ ] Arbitration pursuant to Section 15.4 of AIA Document A201-2017

[ ☐ ] Litigation in a court of competent jurisdiction

[ ☐ ] Other (Specify)

« »

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

« N/A »

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

« »

« »

« »

« »  
« »  
« »

§ 8.3 The Contractor's representative:  
(Name, address, email address, and other information)

« »  
« »  
« »  
« »  
« »  
« »

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

#### § 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

« N/A »

§ 8.7 Other provisions:

« N/A »

#### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A201™–2017, General Conditions of the Contract for Construction

« As detailed in document 00 01 10 Table of Contents and all documents listed therein »

- .5 Drawings

« As detailed in document 00 01 15 List of Contract Drawings and all documents listed therein »

- .6 Specifications

Section	Title	Date	Pages

- .7 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8 Other Exhibits:**

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ ☐ ] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this Agreement.)*

« »

[ ☐ ] The Sustainability Plan:

Title	Date	Pages

[ ☐ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

**.9 Other documents, if any, listed below:**

*(List here any additional documents that are intended to form part of the Contract Documents. All Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

« To be listed in 00 01 10 Table of Contents prior to Contractor Signing »

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER (Signature)**

« »

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**CONTRACTOR (Signature)**

« »

\_\_\_\_\_  
*(Printed name and title)*

**Certificate of Appropriation**

I hereby certify that an appropriation in the amount of this contract is available therefor and that the authorized signatory has been authorized to execute said contract on behalf of the Owner and approve all requisitions and change orders.

\_\_\_\_\_  
**TOWN ACCOUNTANT (Signature)**

\_\_\_\_\_  
*(Printed name and date)*



DOCUMENT 00 52 16  
SUPPLEMENT TO STANDARD AGREEMENT

PART 1 – GENERAL

1.1 RELATED DOCUMENTS

- A. The BIDDING REQUIREMENTS, CONTRACTING REQUIREMENTS, and applicable parts of DIVISION 1 – GENERAL REQUIREMENTS, as listed in the Table of Contents shall be included in and made part of this Section.

1.2 AGREEMENT

- A. American Institute of Owner's Project Managers (AIA) Document A101, "Standard Form of Agreement between Owner and Contractor where the Basis of Payment is an Stipulated Sum", 2017 edition, bound herein as Document 00 52 15 – AGREEMENT BETWEEN CONTRACTOR AND OWNER shall be the Form of Agreement for this Project, and, when completed, will include the Information and modifications contained in this document.

1.3 INFORMATION AND MODIFICATIONS A. Page 1:

1. The Agreement basis of payment will be a Stipulated Sum as required in Document 00 41 13 – FORM OF GENERAL BID.

2. The Owner is the Town of Northbridge 7 Main St, Whitinsville, MA 01588.

3. The Contractor will be the person, firm or corporation contracting to perform the complete Work covered or the legal representative of said party.

4. The Project is Fire Department Station site development and new building, 1681 Providence Road, Northbridge, MA 01534.

5. The Owner's Project

Manager for this Project is The Galante Architecture Studio, Inc., 146 Mount Auburn St. Cambridge, Massachusetts, 02138;; telephone 617-576.2500. Attn: Yar Laakso

1.4 ARTICLE 2 – THE WORK OF THIS CONTRACT

- A. The Contractor shall perform the Work required by the Contract Documents for the complete construction of new fire station and site development. The Contractor shall provide all materials, labor, equipment, tools, machinery, transportation, and services necessary for, and reasonably incidental to, the performance of Work.

1.5 ARTICLE 3-DATES OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- A. The Work to be performed under the Contract shall commence upon issuance of a "Notice to Proceed", anticipated to be issued on or about June 29, 2022

- B. The Work of the Contract shall be performed according to the Contract Documents including restrictions specified under Section 01 11 00 – SUMMARY OF WORK. The Work to be performed under this Contract shall be substantially completed August 29, 2023

C. Liquidated Damages: The General Contractor agrees to pay the Owner for any delay in Work;; the sum of one thousand five hundred (\$1,500.00) per day for every calendar day beyond the above-established date;; said amounts to be deemed payment for liquidated and ascertained for such delay.

1.6 ARTICLE 4- CONTRACT PRICE

- A. The Unit Prices are as described in Section 01 22 00 – UNIT PRICES, of these Specifications.

1.7 ARTICLE 5- PROGRESS PAYMENTS

- A. The provisions of this Article are subject to the provisions of the General Laws of the Commonwealth of Massachusetts, Chapter 30, as amended.

1.8 ARTICLE 6- FINAL PAYMENTS

- A. The provisions will be made in accordance with Chapter 30 of the General Laws of the Commonwealth of Massachusetts

1.9 ARTICLE 7- MISCELLANEOUS PROVISIONS A. Other Provisions:

1. Contractor's Representations

- a. The Contractor has familiarized themselves with the nature and extent of the Contract Documents, work, locality, and all location conditions and federal, state, and local laws, rules, ordinances, and regulations that in any manner may affect costs, progress, or performance of the Work.
- b. The Contractor has made, or has caused to be made, examinations, investigations, and test and studies of such reports, and related data in addition to those referred to in the paragraph above as the Contractor deems necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with other Terms and Conditions of the Contract Documents; and no additional examinations, tests, investigations, reports, and similar data are or will be required by the Contractor for such purposes.
- c. The Contractor confirms that all submittals will conform with all aspects of Contract Documents and they will provide the required extent of information, coordination of all trades, and will be of substantial quality and quantity of information such that the Owner's Project Manager can review all related assemblies combined together as if they are one, all areas of construction, scale and context of each element, product, or application, next to each other, and the Contractor confirms submittals that are deficient in the opinion of the Owner's Project Manager and that require more than two reviews by the Owner's Project Manager are cause for being back-charged for additional time.
- d. The Contractor has correlated the results of such observations, examinations, investigations, tests, reports, and data with the Terms and Conditions of the Contract Documents.
- e. The Contractor has given the Owner's Project Manager written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents, and the Written Resolution thereof by the Owner's Project Manager is acceptable to the Contractor.

2. Miscellaneous

- a. Terms used in this Contract where are defined in Article 1 of Document 00 72 00 GENERAL CONDITIONS (AIA Document A201) and Section 01 42 00, REFERENCES shall have the meaning indicated in the General Conditions; other terms shall have the meanings given them in applicable publications and regulations.
- b. No assignment by a party hereto or any rights under or interest in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are the effect of this restriction may be limited (by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

1.10 ARTICLE 9-

ENUMERATION OF THE CONTRACT DOCUMENTS Delete Paragraphs 9.1.1 through 9.1.7 and insert the following:

- A. The Contract Documents, which comprise the entire contract between the Owner and the Contractor, are attached to this Contract, made a part hereof, and consist of the following:
  1. The Contract -- AIA Document A101-2017.
  2. Contractor's Bid, including required submittals.
  3. Bid, Performance, and Payment Bond.
  4. General Conditions (herein stated and in AIA Document A201-2017).
  5. Modifications to General Conditions.

6. Supplementary Conditions.
  7. Contract Drawings and Specifications bearing the title: "Fire Department Station Northbridge, MA".
  8. AIA Construction Documents, including but not limited to AIA Document A101, and A201, selected for use by the Town of Northbridge, MA.
  9. All Addenda.
  10. Documentation submitted by Contractor during the Performance of the Contract.
  12. Town of Northbridge Standard Signature Sheet, which will be provided separately of this Contract,
- B. There are no Contract Documents other than those listed in this Article. The Contract Documents may only be altered, amended, or repealed by a Modification as defined in Section 1 of the General Conditions.

PART 2 – PRODUCTS (not used)

PART 3 – EXECUTION (not used)

END OF SECTION

DOCUMENT 00 61 13  
LABOR AND MATERIALS PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That we \_\_\_\_\_

\_\_\_\_\_, as Principal  
(Name of Contractor)

a \_\_\_\_\_  
(Corporation, Partnership, or Individual)

hereinafter called "Principal" and \_\_\_\_\_  
(Surety)

\_\_\_\_\_ of \_\_\_\_\_, State of \_\_\_\_\_  
,

hereinafter called the "Surety", are held and firmly bound into The Town of Northbridge 7 Main Street, Whitinsville, MA 01588 hereinafter called "Owner", in the penal sum of

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_ )

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract

with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
a copy of which is hereto attached and made a part hereof for the construction of:

**Church Avenue Reconstruction – Phase 1, Northbridge, MA**

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed hereunder or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, the parties to these present have duly executed in this bond on this  
\_\_\_\_\_ day of \_\_\_\_\_, 2024.

ATTEST:

(SEAL)

\_\_\_\_\_  
(Principal)

By: \_\_\_\_\_  
(Secretary)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Address - Zip Code)

(SEAL)

\_\_\_\_\_  
(Witness as to Principal)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Address - Zip Code)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute Bond.

END OF DOCUMENT

DOCUMENT 00 61 13.13

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That we \_\_\_\_\_

\_\_\_\_\_, as Principal  
(Name of Contractor)

a \_\_\_\_\_  
(Corporation, Partnership, or Individual)

hereinafter called "Principal" and \_\_\_\_\_  
(Surety)

\_\_\_\_\_ of \_\_\_\_\_, State of \_\_\_\_\_,

hereinafter called the "Surety", are held and firmly bound into the Town of Northbridge, 7 Main Street, Whitinsville, MA 01588, hereinafter called "Owner",

in the penal sum of \_\_\_\_\_

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_ )

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2023, a copy of which is hereto attached and made a part hereof for the construction of

**Church Avenue Reconstruction – Phase 1, Northbridge, MA**

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed hereunder or the specifications accompanying the same shall in any way affect its obligation of this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, the parties to these present have duly executed in this bond on the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

ATTEST:

(SEAL)

\_\_\_\_\_  
(Principal)

By \_\_\_\_\_  
(Secretary)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Address - Zip Code)

(SEAL)

\_\_\_\_\_  
(Witness as to Principal)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Address - Zip Code)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute Bond.

END OF DOCUMENT

SUBMITTAL TRANSMITTAL

Date: \_\_\_\_\_

To:       Turning Point Engineering  
          P.O. Box 757  
          Sutton, MA 01590

Re:       Church Avenue  
          Reconstruction – Phase 1  
          Church Avenue  
          Northbridge, MA 01534

From:     \_\_\_\_\_  
          \_\_\_\_\_  
          \_\_\_\_\_

Supplier: \_\_\_\_\_  
  
Address:  \_\_\_\_\_  
          \_\_\_\_\_

Submittal Enclosed: \_\_\_\_\_

Quantity	Spec Section and/or Dwg. No.	Description
_____	_____	_____
_____	_____	_____
_____	_____	_____
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_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Certification:

Per contract, this Contractor certifies that the system or product as submitted, is in accordance with the Contract Documents, all field dimensions have been verified or corrected, and that any deviations existing between these drawings and the Contract Documents are listed below. The Contractor further certifies that these products or assemblies shall be installed in conformance with the Contract Documents except for exceptions as specifically listed below.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contractor Signature: \_\_\_\_\_ Copy to: \_\_\_\_\_



DOCUMENT 00 63 25

## SUBSTITUTION REQUEST FORM

Contractor requests for substitutions will be considered upon receipt of this completed Substitution Request Form and supporting documentation. Substitutions made without completion of this form and Owner's Project Manager's approval will be considered defective work.

Project: Church Avenue Reconstruction – Phase 1  
Church Avenue  
Whitinsville, MA 01534

To: \_\_\_\_\_

The Contractor proposes the following substitution in accordance with the requirements of the Contract Documents:

Scope of Substitution: \_\_\_\_\_

Specification References: \_\_\_\_\_

Drawing References: \_\_\_\_\_

Reasons for Proposed Substitution: \_\_\_\_\_

\_\_\_\_\_

Impact on Project Schedule: \_\_\_\_\_

Impact on Guarantees and Warranties: \_\_\_\_\_

Coordination Required with Adjacent Materials and Related Systems: \_\_\_\_\_

\_\_\_\_\_

List all Deviations from Specified Requirements: \_\_\_\_\_

Attachments: ☐ Yes, ☐ No. Attach supporting documentation sufficient for Owner's Project Manager to evaluate substitution. Substitution Request Forms submitted without adequate documentation will be returned without review.

Response Date: \_\_\_\_\_ (Date by which response by Owner's Project Manager is requested to maintain project schedule and allow sufficient time for inclusion of proposed substitution.)

Signature below signifies acceptance of responsibility for accuracy and completeness of information included in this Substitution Request Form.

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### OWNER'S PROJECT MANAGER'S RESPONSE

Notations listed below still have same meaning as on Owner's Project Manager's approval stamp. Clarifications to or changes of project schedule or time shall be processed using Change Order forms.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Reviewed: \_\_\_\_\_ Revise and Resubmit: \_\_\_\_\_

Approved as Noted, Resubmission not Required: \_\_\_\_\_ Not Approved: \_\_\_\_\_

# DRAFT AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address)

« Church Avenue Reconstruction – Phase 1 »  
« Church Avenue »  
« Northbridge, MA 01534 »

### THE OWNER:

(Name, legal status and address)

« Town of Northbridge »  
« 7 Main Street »  
« Whitinsville, MA 01588 »

### THE OWNER'S PROJECT MANAGER:

(Name, legal status and address)

« Turning Point Engineering »  
« P.O. Box 757 »  
« Sutton, MA 01590 »

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12	UNCOVERING AND CORRECTION OF WORK
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### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, *Guide for Supplementary Conditions*.

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

#### **§ 1.1.1 The Contract Documents**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Owner's Project Manager. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### **§ 1.1.2 The Contract**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Owner's Project Manager or the Owner's Project Manager's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Owner's Project Manager or the Owner's Project Manager's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Owner's Project Manager shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Owner's Project Manager's duties.

#### **§ 1.1.3 The Work**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 The Project**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### **§ 1.1.5 The Drawings**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### **§ 1.1.6 The Specifications**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 Instruments of Service**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Owner's Project Manager and the Owner's Project Manager's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 Initial Decision Maker**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### **§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### **§ 1.3 Capitalization**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Owner's Project Managers.

### **§ 1.4 Interpretation**

In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### **§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

**§ 1.5.1** The Owner's Project Manager and the Owner's Project Manager's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's Project Manager's or Owner's Project Manager's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Owner's Project Manager, and the Owner's Project Manager's consultants.

### **§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### **§ 1.7 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

### **§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and

without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Owner's Project Manager does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### **§ 2.2 Evidence of the Owner's Financial Arrangements**

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### **§ 2.3 Information and Services Required of the Owner**

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.3.2** The Owner shall retain an Owner's Project Manager lawfully licensed to practice Architecture, or an entity lawfully practicing Architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Owner's Project Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.3** If the employment of the Owner's Project Manager terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Owner's Project Manager.

**§ 2.3.4** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.3.6** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

#### **§ 2.4 Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

#### **§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Owner's Project Manager and the Owner's Project Manager may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Owner's Project Manager's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Owner's Project Manager, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### **ARTICLE 3 CONTRACTOR**

#### **§ 3.1 General**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner's Project Manager in the Owner's Project Manager's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### **§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Owner's Project Manager any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such



form as the Owner's Project Manager may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner's Project Manager any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner's Project Manager may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Owner's Project Manager issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Owner's Project Manager for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### **§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Owner's Project Manager, and shall propose alternative means, methods, techniques, sequences, or procedures. The Owner's Project Manager shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Owner's Project Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Owner's Project Manager in accordance with Section 3.12.8 or ordered by the Owner's Project Manager in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Owner's Project Manager and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner and Owner's Project Manager that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects,

except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner's Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### **§ 3.6.2 Taxes**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Owner's Project Manager before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Owner's Project Manager will promptly investigate such conditions and, if the Owner's Project Manager determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Owner's Project Manager determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner's Project Manager shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Owner's Project Manager's determination or recommendation, that party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Owner's Project Manager. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 Allowances**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Owner's Project Manager of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Owner's Project Manager may notify the Contractor, stating whether the Owner or the Owner's Project Manager (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Owner's Project Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Owner's Project Manager has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Owner's Project Manager's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Owner's Project Manager's approval. The Owner's Project Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Owner's Project Manager reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Owner's Project Manager.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Owner's Project Manager and Owner, and delivered to the Owner's Project Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Owner's Project Manager is subject to the limitations of Section 4.2.7. Informational submittals upon which the Owner's Project Manager is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Owner's Project Manager without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Owner's Project Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Owner's Project Manager or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Owner's Project Manager that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Owner's Project Manager.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Owner's Project Manager's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Owner's Project Manager of such deviation at the time of submittal and (1) the Owner's Project Manager has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Owner's Project Manager's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Owner's Project Manager on previous submittals. In the absence of such notice, the Owner's Project Manager's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of Architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Owner's Project Manager will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Owner's Project Manager. The Owner and the Owner's Project Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Owner's Project Manager have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Owner's Project Manager will review and approve or take other appropriate

action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§ 3.12.11** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Owner's Project Manager at the time and in the form specified by the Owner's Project Manager.

### **§ 3.13 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 Cutting and Patching**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner and Owner's Project Manager with access to the Work in preparation and progress wherever located.

### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Owner's Project Manager harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Owner's Project Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Owner's Project Manager.

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Owner's Project Manager, Owner's Project Manager's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the

indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

#### **ARTICLE 4 OWNER'S PROJECT MANAGER**

##### **§ 4.1 General**

**§ 4.1.1** The Owner's Project Manager is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Owner's Project Manager as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Owner's Project Manager. Consent shall not be unreasonably withheld.

##### **§ 4.2 Administration of the Contract**

**§ 4.2.1** The Owner's Project Manager will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Owner's Project Manager issues the final Certificate for Payment. The Owner's Project Manager will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Owner's Project Manager will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Owner's Project Manager will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Project Manager will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 4.2.3** On the basis of the site visits, the Owner's Project Manager will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Owner's Project Manager will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner's Project Manager will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

##### **§ 4.2.4 Communications**

The Owner and Contractor shall include the Owner's Project Manager in all communications that relate to or affect the Owner's Project Manager's services or professional responsibilities. The Owner shall promptly notify the Owner's Project Manager of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Owner's Project Manager's consultants shall be through the Owner's Project Manager. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

**§ 4.2.5** Based on the Owner's Project Manager's evaluations of the Contractor's Applications for Payment, the Owner's Project Manager will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Owner's Project Manager has authority to reject Work that does not conform to the Contract Documents. Whenever the Owner's Project Manager considers it necessary or advisable, the Owner's Project Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Owner's Project Manager nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner's Project Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Owner's Project Manager will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Owner's Project Manager's action will be taken in accordance with the submittal schedule approved by the Owner's Project Manager or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's Project Manager's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Owner's Project Manager's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Owner's Project Manager's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Owner's Project Manager's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Owner's Project Manager will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Owner's Project Manager will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Owner's Project Manager will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Owner's Project Manager agree, the Owner's Project Manager will provide one or more Project representatives to assist in carrying out the Owner's Project Manager's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Owner's Project Manager will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Owner's Project Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Owner's Project Manager will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Owner's Project Manager will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Owner's Project Manager's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Owner's Project Manager will review and respond to requests for information about the Contract Documents. The Owner's Project Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Owner's Project Manager will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### **§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Owner's Project Manager of the persons or entities proposed for each principal portion

of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Owner's Project Manager may notify the Contractor whether the Owner or the Owner's Project Manager (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Owner's Project Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Owner's Project Manager has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner or Owner's Project Manager has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Owner's Project Manager has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Owner's Project Manager makes reasonable objection to such substitution.

### **§ 5.3 Subcontractual Relations**

**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Owner's Project Manager. Each subcontract agreement shall preserve and protect the rights of the Owner and Owner's Project Manager under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub- subcontractors.

### **§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

### **§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts**



§ 6.1.1 The term “Separate Contractor(s)” shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner’s own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term “Contractor” in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner’s own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner’s own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

## **§ 6.2 Mutual Responsibility**

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor’s construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor’s Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Owner’s Project Manager of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor’s Work. Failure of the Contractor to notify the Owner’s Project Manager of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner’s or Separate Contractor’s completed or partially completed construction is fit and proper to receive the Contractor’s Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor’s delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor’s delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

## **§ 6.3 Owner’s Right to Clean Up**

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner’s Project Manager will allocate the cost among those responsible.

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 General**

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor, and Owner's Project Manager. A Construction Change Directive requires agreement by the Owner and Owner's Project Manager and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Owner's Project Manager alone.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

## **§ 7.2 Change Orders**

**§ 7.2.1** A Change Order is a written instrument prepared by the Owner's Project Manager and signed by the Owner, Contractor, and

Owner's Project Manager stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

## **§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Owner's Project Manager and signed by the Owner and Owner's Project Manager, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner's Project Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner's Project Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Owner's Project Manager;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner's Project Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Owner's Project Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Owner's Project Manager will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Owner's Project Manager determines, in the Owner's Project Manager's professional judgment, to be reasonably justified. The Owner's Project Manager's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Owner's Project Manager concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner's Project Manager will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### **§ 7.4 Minor Changes in the Work**

The Owner's Project Manager may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Owner's Project Manager's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner's Project Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Owner's Project Manager's order for a minor change without prior notice to the Owner's Project Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### **ARTICLE 8 TIME**

#### **§ 8.1 Definitions**

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Owner's Project Manager in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### **§ 8.2 Progress and Completion**

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### **§ 8.3 Delays and Extensions of Time**

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Owner's Project Manager, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions

documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Owner's Project Manager determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner's Project Manager may determine.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### **§ 9.2 Schedule of Values**

**§ 9.2.1** Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Owner's Project Manager before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner's Project Manager. This schedule, unless objected to by the Owner's Project Manager, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Owner's Project Manager and supported by such data to substantiate its accuracy as the Owner's Project Manager may require, and unless objected to by the Owner's Project Manager, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner's Project Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Owner's Project Manager require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Owner's Project Manager, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims,

security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

#### **§ 9.4 Certificates for Payment**

**§ 9.4.1** The Owner's Project Manager will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Owner's Project Manager determines is properly due, and notify the Contractor and Owner of the Owner's Project Manager's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Owner's Project Manager's reason for withholding certification in whole as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Owner's Project Manager to the Owner, based on the Owner's Project Manager's evaluation of the Work and the data in the Application for Payment, that, to the best of the Owner's Project Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Owner's Project Manager. However, the issuance of a Certificate for Payment will not be a representation that the Owner's Project Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Owner's Project Manager may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's Project Manager's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Owner's Project Manager is unable to certify payment in the amount of the Application, the Owner's Project Manager will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Owner's Project Manager cannot agree on a revised amount, the Owner's Project Manager will promptly issue a Certificate for Payment for the amount for which the Owner's Project Manager is able to make such representations to the Owner. The Owner's Project Manager may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's Project Manager's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When either party disputes the Owner's Project Manager's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Owner's Project Manager withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Owner's Project Manager and the Contractor shall reflect such payment on its next

Application for Payment.

## **§ 9.6 Progress Payments**

**§ 9.6.1** After the Owner's Project Manager has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Owner's Project Manager.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

**§ 9.6.3** The Owner's Project Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner's Project Manager and Owner on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Owner's Project Manager shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## **§ 9.7 Failure of Payment**

**§ 9.7** If the Owner's Project Manager does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Owner's Project Manager or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Owner's Project Manager, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

## **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner's Project Manager a comprehensive list of

items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Owner's Project Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's Project Manager's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner's Project Manager. In such case, the Contractor shall then submit a request for another inspection by the Owner's Project Manager to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Owner's Project Manager will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Owner's Project Manager as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Owner's Project Manager.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Owner's Project Manager shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner's Project Manager will promptly make such inspection. When the Owner's Project Manager finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner's Project Manager will promptly issue a final Certificate for Payment stating that to the best of the Owner's Project Manager's knowledge, information and belief, and on the basis of the Owner's Project Manager's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Owner's Project Manager's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner's Project Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by

Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Owner's Project Manager so confirms, the Owner shall, upon application by the Contractor and certification by the Owner's Project Manager, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner's Project Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.



**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Owner's Project Manager or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Owner's Project Manager.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Owner's Project Manager of the condition.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Owner's Project Manager the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Owner's Project Manager will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Owner's Project Manager has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Owner's Project Manager have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Owner's Project Manager, Owner's Project Manager's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

#### **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Owner's Project Manager, and Owner's Project Manager's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

#### **§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Owner's Project Manager and Owner's Project Manager's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Owner's Project Manager, Owner's Project Manager's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Owner's Project Manager for loss of use of the Owner's property, due to fire or other hazards however caused.

### **§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgage clause and of Section 11.5.2. The Owner shall pay the Owner's Project Manager and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Owner's Project Manager and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15.

Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Owner's Project Manager's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner's Project Manager, be uncovered for the Owner's Project Manager's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Owner's Project Manager has not specifically requested to examine prior to its being covered, the Owner's Project Manager may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### **§ 12.2 Correction of Work**

#### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Owner's Project Manager or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's Project Manager's services and expenses made necessary thereby, shall be at the Contractor's expense.

#### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the

Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Owner's Project Manager, the Owner may correct it in accordance with Section 2.5.

**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **§ 12.3 Acceptance of Nonconforming Work**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 Governing Law**

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### **§ 13.2 Successors and Assigns**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### **§ 13.3 Rights and Remedies**

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§ 13.3.2** No action or failure to act by the Owner, Owner's Project Manager, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### **§ 13.4 Tests and Inspections**

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Owner's Project Manager timely notice of when and where tests and inspections are to be made so that the Owner's Project Manager may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Owner's Project Manager, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Owner's Project Manager will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner's Project Manager of when and where tests and inspections are to be made so that the Owner's Project Manager may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's Project Manager's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner's Project Manager.

**§ 13.4.5** If the Owner's Project Manager is to observe tests, inspections, or approvals required by the Contract Documents, the Owner's Project Manager will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

#### **§ 13.5 Interest**

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

#### **§ 14.1 Termination by the Contractor**

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Owner's Project Manager has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Owner's Project Manager, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract

Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Owner's Project Manager, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### **§ 14.2 Termination by the Owner for Cause**

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Owner's Project Manager that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Owner's Project Manager's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

### **§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

### **§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 Claims**

#### **§ 15.1.1 Definition**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### **§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Owner's Project Manager, if the Owner's Project Manager is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days

after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### § 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Owner's Project Manager will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

#### § 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Owner's Project Manager will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient



information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Owner's Project Manager, if the Owner's Project Manager is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

**§ 15.2.6.1** Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### **§ 15.3 Mediation**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 15.4 Arbitration**

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**§ 15.4.4 Consolidation or Joinder**

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

DOCUMENT 00 73 00

MODIFICATIONS TO THE GENERAL CONDITIONS

I. THE GENERAL CONDITIONS

The "General Conditions of the Contract for Construction", AIA Document A201, (2017), Articles 1 through 17 inclusive, is a part of this contract.

II. THE SUPPLEMENTARY GENERAL CONDITIONS

The following supplements modify, delete and/or add to the General Conditions. Where any Article, Paragraph or subparagraph in the General Conditions is supplemented by one of the following paragraphs, the provisions of such Article, Paragraph, or subparagraph shall remain in effect and the supplemental provisions shall be considered as added thereto. Where any Article, Paragraph, or subparagraph in the General Conditions is amended, voided or superseded by any of the following paragraphs, the provisions of such Article, Paragraph or subparagraph not so amended, voided, or superseded shall remain in effect.

Paragraphs or subparagraphs marked with an asterisk (\*) are required by or are intended to be consistent with the requirements of Massachusetts statutes governing public construction contracts in the Commonwealth of Massachusetts (referred to in such paragraphs or subparagraphs as the "Commonwealth"). Any other provisions required by statute to be included herein shall be deemed to be so included. In addition, the Owner and Contractor recognize that other rights, duties and obligations with respect to public construction contracts are provided for by statute, notwithstanding the fact that they are not provided for in the Contract Documents. In case of conflict between the asterisked provisions and other provisions of the Contract Documents, the asterisked provisions shall govern. In case of conflict between the provisions of the Contract Documents and the provisions of any applicable statute, the statutory provisions shall govern. Where the term "awarding authority" appears in any asterisked provision, it shall mean the Owner.

III. MODIFICATIONS TO VARIOUS ARTICLES OF THE AIA GENERAL CONDITIONS

ARTICLE 1: GENERAL PROVISIONS

1.1.1 Add the following at the end of subparagraph 1.1.1:

In the event of any conflict among the Contract Documents, the Documents shall be construed according to the following priorities:

Highest Priority:	Massachusetts General Laws
Second Priority:	Owner-Contractor Agreement
Third Priority:	Owner's Project Manager's Interpretation
Fourth Priority:	Addenda, with later date having greater priority
Fifth Priority:	Division 0 Requirements, with Supplementary General Conditions having priority over General Conditions
Sixth Priority:	Division 1 General Requirements
Seventh Priority:	Technical Specifications
Eighth Priority:	Drawings, with larger scale drawings taking precedence over smaller scale drawings
Ninth Priority:	Change Directives issued by Owner's Project Manager

1.1.2 Add the following at the beginning of the fourth sentence of subparagraph 1.1.2:

"Except as provided in Paragraph 3.18,"

Delete the fifth sentence of subparagraph 1.1.2.

1.1.3 Change the first sentence of subparagraph 1.1.3 to read as follows:

The term "Work" means the construction required by the Contract Documents, including all labor necessary to produce such construction, and all materials and equipment incorporated

or to be incorporated therein. All work indicated on the drawing and or indicated or required in the specifications and/or required by means and methods or required by cross coordination of all trades is included in the contract price submitted by all General Contractors, Sub-contractors, subcontractors, etc.

- 1.2.1 Add at the end of the first sentence of subparagraph 1.2.1:

A copy of the signed set shall be deposited with the Owner's Project Manager.

- 1.2.3 Add the following at the end of subparagraph 1.2.3:

All Work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this Contract unless it is specifically indicated in the Contract Documents that such Work is to be done by others. Should the Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or greater quantity of Work unless otherwise directed by written addendum to the Contract. All work indicated on the drawing and or indicated or required in the specifications and/or required by means and methods or required by cross coordination of all trades is included in the contract price submitted by all General Contractors, Sub-contractors, subcontractors, etc.

- 1.2.6-  
1.2.13

Add new subparagraphs 1.2.6 through 1.2.13 as follows:

1.2.6 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

1.2.7 Where codes, standards, requirements and publications of public and private bodies are referred to in the Specifications, references shall be understood to be to the latest revision prior to the date of receiving bids, except where otherwise indicated.

1.2.8 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with the quality of the surrounding Work and of the construction of the Project generally.

1.2.9 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

1.2.10 The Mechanical, Electrical and Fire Protection Drawings are diagrammatic only, and are not intended to show the alignment, physical locations or configurations of such Work. Such Work shall be installed without additional cost to the Owner to clear all obstructions, permit proper clearances for the Work of other trades, and present an orderly appearance and function where exposed. Prior to beginning such Work, the Contractor shall prepare coordination drawings showing the exact alignment, physical location and configuration of the Mechanical, Electrical and Fire Protection installations and demonstrating to the Contractor's satisfaction that the installations will comply with the preceding sentence. The Contractor shall be solely liable and responsible for any costs and/or delays resulting from the Contractor's failure to prepare such coordination drawings.

1.2.11 Exact locations of fixtures and outlets shall be obtained from the Owner's Project Manager as provided in subparagraph 3.2.5 before the Work is roughed in; Work installed without such information from the Owner's Project Manager shall be relocated at the Contractor's expense.

1.2.12 Test boring or soil test information included with the Contract Documents or otherwise made available to the Contractor was obtained by the Owner for use by the Owner's Project Manager in the design of the Project or Work. The Owner does not hold out such information to the Contractor as an accurate or approximate indication of subsurface

conditions, and no claim for extra cost or extension of time resulting from a reliance by the Contractor on such information shall be allowed except as provided in subparagraph 4.3.6.

1.2.13 Where the Work is to fit with existing conditions or work to be performed by others, the Contractor shall fully and completely join the Work with such conditions or work, unless otherwise specified.

## ARTICLE 2: OWNER

2.1.1 Delete the second sentence of subparagraph 2.1.1.

2.1.2 Delete subparagraph 2.1.2.

2.2.1 Delete subparagraph 2.2.1.

2.2.4 Change subparagraph 2.2.4 to read as follows:

2.2.4 Information or services required of the Owner hereunder shall be furnished by the Owner with reasonable promptness after receipt from the Contractor of a written request for such information or services.

2.2.5 Add new subparagraph 2.2.5 as follows:

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, up to fifteen copies of Drawings and Project manuals for execution of the Work.

2.3.1 After the last sentence, add:

The Contractor shall remain responsible for maintaining progress and shall not be entitled to any increase in Contract Time or Contract Sum, and the Contractor shall reimburse the Owner all costs incurred by the Owner and attributable to such an order to stop the Work. The contractor is responsible for all shop drawings, samples, product data (hereinafter "submittals") to be provided as thoroughly required in Contract Documents. If, in the opinion of the Owner's Project Manager these are not, or require more than two reviews by the Owner's Project Manager, the contractor shall be deemed in violation of progress and schedule and will be charged \$1,000.00 per additional review, and subject to additional back charges.

2.4.1 Delete the first and second sentences of subparagraph 2.4.1 and substitute the following:

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to begin and prosecute correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies.

In the third sentence of subparagraph 2.4.1, replace the words "Change Order" with the words "Construction Change Directive," and delete the fourth sentence.

## ARTICLE 3: CONTRACTOR

3.2.1 Change subparagraph 3.2.1 to read as follows:

3.2.1 Before starting the Work, and at frequent intervals during the progress thereof, the Contractor shall carefully study and compare the Contract Documents with each other and with the information furnished by the Owner pursuant to subparagraph 2.2.2 and shall at once report to the Owner's Project Manager any error, inconsistency or omission the Contractor may discover. Any necessary change shall be ordered as provided in Article 7, subject to the requirements of Paragraph 1.2 and other provisions of the Contract Documents. If the Contractor proceeds with the Work without such notice to the Owner's Project Manager, having discovered such inconsistencies or omissions, or if by reasonable study of the Contract Documents the Contractor could have discovered such, the Contractor shall bear all costs arising therefrom. The contractor is responsible for all shop drawings, samples, product data (hereinafter "submittals") to be provided as thoroughly required in Contract Documents. If, in the opinion of the Owner's Project Manager these are not, or require more than two reviews by the Owner's Project Manager, the contractor shall be

deemed in violation of progress and schedule and will be charged \$1,000.00 per additional review, and subject to additional back charges.

3.2.4-  
3.2.5

Add new subparagraph 3.2.4 and 3.2.5 as follows:

3.2.4 The Contractor shall give the Owner's Project Manager timely notice of any additional Drawings, Specifications, or instructions required to define the Work in greater detail, or to permit the proper progress of the Work.

3.2.5 The Contractor shall not proceed with any Work not clearly and consistently defined in detail in the Contract Documents, but shall request additional drawings or instructions from the Owner's Project Manager as provided in subparagraph 3.2.4. If the Contractor proceeds with such Work without obtaining further Drawings, Specifications or instructions, the Contractor shall correct Work incorrectly done at the Contractor's own expense.

3.3.1

Delete the last ten words of subparagraph 3.3.1, and add the following:

Where the Contract Documents refer to particular construction means, methods, techniques, sequences or procedures or indicate or imply that such are to be used in the Work, such mention is intended only to indicate that the operations of the Contractor shall be such as to produce at least the quality of work implied by the operations described, but the actual determination of whether or not the described operations may be safely and suitably employed on the Work shall be the responsibility of the Contractor, who shall notify the Owner's Project Manager in writing of the actual means, methods, techniques, sequences or procedures which will be employed on the Work, if these differ from those mentioned in the Contract Documents. All loss, damage, or liability, or cost of correcting defective work arising from the employment of any construction means, methods, techniques, sequences or procedures shall be borne by the Contractor, notwithstanding that such construction means, methods, techniques, sequences or procedures are referred to, indicated or implied by the Contract Documents, unless the Contractor has given timely notice to the Owner and Owner's Project Manager in writing that such means, methods, techniques, sequences or procedures are not safe or suitable, and the Owner has then instructed the Contractor in writing to proceed at the Owner's risk.

3.3.2

Change subparagraph 3.3.2 to read as follows:

3.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of all entities or persons performing or supplying Services and the Work.

3.4.1

Add the following sentence to the end of subparagraph 3.4.1:

The word "provide" shall mean furnish and install complete, including connections, unless otherwise specified.

3.4.4-  
3.4.6

Add new Subparagraphs 3.4.4, 3.4.5 and 3.4.6 as follows:

3.4.4\* (Statutory reference: M.G.L. c.149, §§30 and 34)

No laborer, worker, mechanic, foreman or inspector working within this Commonwealth in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or part of the work contemplated by the contract, shall be required or permitted to work more than eight hours in any one day or more than forty-eight hours in any one week, or more than six days in any one week, except in cases of emergency.

3.4.5\* (Statutory reference: M.G.L. c.149 §25)

Every employee under this contract shall lodge, board and trade where and with whom he elects, and neither the Contractor nor his agents or employees shall, either directly or indirectly, require as a condition of the employment of any person that the employee shall lodge, board or trade at a particular place or with a particular person.

3.4.6\* (Statutory Reference: M.G.L. c.149 §34B)

The Contractor shall pay to any reserve police officer employed by him in any city or town the prevailing rate of wage paid to regular police officers in such city or town.

3.5.1

Delete the first sentence of subparagraph 3.5.1 and replace it as follows:

The Contractor warrants that the materials and equipment furnished under the Contract will be new and of recent manufacture unless otherwise specified, and that all Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. Inspection of such materials is to be from no less than 6" (six inches) away from material, installation, or other surrounding conditions to determine and certify quality of intent and compliance with Contract Documents.

Delete the last two sentences.

3.5.3-  
3.5.10

Add new subparagraphs 3.5.2 through 3.5.10 as follows:

3.5.3\* (Statutory reference: M.G.L. c.30 §39M(b))

Where products or materials are prescribed by manufacturer name, trade name, or catalog reference, the word "or approved equal" shall be understood to follow. An item shall be considered equal to the item so named or described if, in the opinion of the Owner's Project Manager:

- a. it is at least equal in quality, durability, appearance, strength and design;
- b. it performs at least equally the function imposed by the general design for the work;
- c. it conforms substantially, even with deviations, to the detailed requirements for the items as indicated by the specifications.

The contractor is responsible for all shop drawings, samples, product data (hereinafter "submittals") to be provided as thoroughly required in Contract Documents. If, in the opinion of the Owner's Project Manager these are not, or require more than two reviews by the Owner's Project Manager, the contractor shall be deemed in violation of progress and schedule and will be charged

\$1,000.00 per additional review, and subject to additional back charges.

Any structural or mechanical changes made necessary to accommodate substituted equipment under this paragraph shall be at the expense of the Contractor or Subcontractor responsible for the work item.

3.5.4 The Contractor shall be responsible for determining that all materials furnished for the Work meet all intent and requirements of the Contract Documents. The Owner's Project Manager may require the Contractor to produce reasonable evidence that a material meets such requirements, such as full scale sample product, certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of the Owner's Project Manager, would lead to a reasonable certainty that any material used, or proposed to be used, in the Work meets the requirements of the Contract Documents. All such data shall be furnished at the Contractor's expense. This provision shall not require the Contractor to pay for periodic testing of different batches of the same material, unless such testing is specifically required by the Contract Documents to be performed at the Contractor's expense.

3.5.5 In all cases in which a manufacturer's name, trade name or other proprietary designation is used in connection with materials or articles to be furnished under this Contract, whether or not the phrase "or equal" is used after such name, the Contractor shall furnish the product of the named manufacturer(s) without substitution, unless a written request for a substitute has been submitted by the Contractor and approved in writing by the Owner's Project Manager as provided in subparagraph 3.5.4.

3.5.6 If the Contractor proposes to use a material which, while suitable for the intended use, deviates in any way from the detailed requirements of the Contract Documents, the Contractor shall inform the Owner's Project Manager in writing of the nature of such deviations at the time the material is submitted for approval, and shall request written approval of the deviation from the requirements of the Contract Documents.

3.5.7 In requesting approval of deviations or substitutions, the Contractor shall provide, upon request, evidence leading to a reasonable certainty that the proposed substitution or deviation will provide a quality of result at least equal to that otherwise attainable. If, in the

opinion of the Owner's Project Manager, the evidence presented by the Contractor does not provide a sufficient basis for such reasonable certainty, the Owner's Project Manager may reject such substitution or deviation without further investigation.

3.5.8 The Contract Documents are intended to produce a building of consistent character and quality of design. All components of the building including visible items of mechanical and electrical equipment have been selected to have a coordinated design in relation to the overall appearance of the building. The Owner's Project Manager shall judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. The Owner's Project Manager will not approve as equal to materials specified proposed substitutes which, in the Owner's Project Manager's opinion, would be out of character, obtrusive, or otherwise inconsistent with the character or quality of design of the Project. In order to permit coordinated design of color and finishes the Contractor shall, if required by the Owner's Project Manager, furnish the substituted material in any color, finish, texture, or pattern which would have been available from the manufacturer originally specified, at no additional cost to the Owner.

3.5.9 Any additional cost, or any loss or damage arising from the substitution of any material or any method for those originally specified shall be borne by the Contractor, notwithstanding approval or acceptance of such substitution by the Owner or the Owner's Project Manager, unless such substitution was made at the written request or direction of the Owner or the Owner's Project Manager.

3.6.0 The warranty provided in this paragraph 3.5 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

3.6.1 The Contractor shall procure and deliver to the Owner's Project Manager, no later than the date claimed by the Contractor as the date of Substantial Completion, all special warranties required by the Contract Documents. Delivery by the Contractor shall constitute the Contractor's guarantee to the Owner that the warranty will be performed in accordance with its terms and conditions.

3.6.2 Add the following at the end of Subparagraph 3.6.2:

"However, the Contractor shall not pay, and the Owner shall not reimburse or pay the Contractor for, any sales taxes for building supplies or materials for which an exemption is provided in M.G.L. c.64H, §6(f)."

3.8 Delete Paragraph 3.8.

3.9 Change the title of paragraph 3.9 to read "Superintendence".

3.9.1 Change subparagraph 3.9.1 to read as follows:

The Contractor shall designate in writing to the Owner the names of the superintendent and necessary assistants at the commencement of work. These persons shall be assigned to this project only for the duration of this project, unless agreement otherwise is provided in writing by the Owner. The superintendent and necessary assistants shall not be assigned or replaced without written notice to the Owner. If the Owner objects to the Contractor's superintendent or any assistant, whether initially or otherwise, the Contractor shall submit a replacement superintendent or assistant at no increase in the Contract Sum or Contract Time.

.1 The Contractor's project superintendent and similar authorized representatives of any Subcontractor, Supplier, or other person or organization shall attend all meetings, as requested by the Owner or Owner's Project Manager at no increase in the Contract Sum or Contract Time.

.2 The Contractor shall, upon written request of the Owner, remove from the premises and replace workers whom the Owner or Owner's Project Manager deems to be disorderly, careless or incompetent or to be employed in violation of the terms of the Contract Documents, at no increase in the Contract Sum or Contract Time.

3.9.4-



3.9.7 Add new subparagraphs 3.9.2 through 3.9.5 as follows:

3.9.4 The Contractor shall retain a competent Registered Professional Engineer or Registered Land Surveyor, registered in the Commonwealth of Massachusetts, acceptable to the Owner's Project Manager, who shall establish the exterior lines and required elevations of all buildings and structures to be erected on the site and shall establish sufficient lines and grades for the construction of associated Work such as, but not limited to, roads, utilities and site grading. The Engineer or Land Surveyor shall certify as to the actual location of the constructed facilities in relation to property lines, building lines, easements, and other restrictive boundaries.

3.9.5 The Contractor shall establish ALL building grades, lines, levels, column, wall and partition lines required by the various Subcontractors in laying out their Work.

3.9.6 The Contractor shall coordinate and supervise the Work performed by Subcontractors to the end that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. The Contractor and all Subcontractors shall at all times afford each trade, any separate contractor, or the Owner, every reasonable opportunity for the installation of Work and the storage of materials.

3.9.7 The Contractor shall arrange for and attend job meetings with the Owner's Project Manager and such other persons as the Owner's Project Manager may from time to time wish to have present. The Contractor shall be represented by a principal, project manager, general superintendent or other authorized main office representative, as well as by the Contractor's own superintendent. An authorized representative of any Subcontractor or Sub-subcontractor shall attend such meetings if the representative's presence is requested by the Owner's Project Manager. Such representatives shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, change orders, time schedules and manpower. Any notices required under the Contract may be served on such representatives.

3.10.1 Change subparagraph 3.10.1 to read as follows:

3.10.1 The Contractor shall prepare and submit to the Owner's Project Manager a progress schedule, and shall comply with such schedule, as described in subparagraphs 8.2.4 through 8.2.10.

3.10.3 Delete subparagraph 3.10.3.

3.12.7 Change subparagraph 3.12.7 to read as follows:

3.12.7 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals the Contractor thereby represents that the Contractor has determined and verified all dimensions, quantities, field dimensions, relations to existing work, coordination with work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data, Samples, or similar submittals and verification of compliance with all the requirements of the Contract Documents. The accuracy of all such information is the responsibility of the Contractor. In reviewing Shop Drawings, Product Data, Samples, and similar submittals the Owner's Project Manager shall be entitled to rely upon the Contractor's representation that such information is correct and accurate.

3.12.9 Add the following at the end of subparagraph 3.12.9:

Unless such written notice has been given, the Owner's Project Manager's approval of a resubmitted Shop Drawing, Product Data, Sample, or similar submittal shall not constitute approval of any changes not requested on the prior submittal.

3.12.11 Change subparagraph 3.12.11 to read as follows:

When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Owner shall be entitled to rely upon such certifications, and neither the Owner nor the Owner's Project Manager shall be expected to make any independent examination with respect thereto.

3.13.1 Add subparagraph 3.13.1 to read as follows:

3.13.1 The right of possession of the premises and the improvements made thereon by the Contractor shall remain at all times in the Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Contractor shall confine the Contractor's apparatus, the storage of materials and the operations of the Contractor's workmen to limits indicated by law, ordinances, the Contract Documents and permits and/or directions of the Owner's Project Manager and shall not unreasonably encumber the premises with the Contractor's materials. The Owner shall not be liable to the Contractor, the Subcontractors, their employees or anyone else with respect to the conditions of the premises, except only for a condition caused directly and solely by the negligence of the Owner.

3.15.1 Add the following at the end of subparagraph 3.15.1:

Immediately prior to the Owner's Project Manager's inspection for Substantial Completion, the Contractor shall completely provide a written punch list of work, completely clean the premises. All concrete, epoxy, painted, and ceramic surfaces shall be cleaned and washed. Resilient coverings shall be cleaned, waxed and buffed. Woodwork shall be sealed, dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and all metal surfaces shall be cleaned and polished and in full operational order. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic or any other product shall be replaced by the Contractor at the Contractor's expense.

#### ARTICLE 4: OWNER'S PROJECT MANAGER

4.1.2 Delete subparagraph 4.1.2.

4.2.7 In subparagraph 4.2.7, add to the end of the first sentence, "and for conformance with design concepts determined by the Owner's Project Manager to ensure all aspects of design interest are defined and carried out in the project." Change the second sentence to read:

"The Owner's Project Manager's action will be taken over a two-week period, while allowing sufficient time in the Owner's Project Manager's professional judgment to permit adequate review. If in the opinion of the Owner's Project Manager the submittals do NOT conform with ALL aspects of Contract Documents and do NOT provide sufficient extent of information, coordination of other trades, or are of limited quality or quantity of information, each submittal will be rejected. If the Contractor does NOT provide submittals that in the sole opinion of the Owner's Project Manager, are adequate after TWO reviews, the Contractor will be back charged for each additional submittal and Owner's Project Manager's review. In the fifth sentence, delete the words "unless otherwise specifically stated by the Owner's Project Manager." Add to the end of the last sentence the words "the Contractor is required to submit the entire assembly in order to receive approval on each component".

4.2.10 At the end of subparagraph 4.2.10, add the following:

If no such exhibit has been so incorporated, the duties, responsibilities, and limitations of authority of such Project Representative shall be as set forth in the edition of AIA Document B352 current as of the date of the Agreement. Alternatively, the Owner may employ a Clerk of the Works for the Project, in which case the Owner shall, upon request of the Contractor, provide the Contractor with a written statement of the duties, responsibilities and limitations of authority of such Clerk of the Works. Except as expressly set forth in such written statement, the Clerk of the Works shall have no authority to approve Work, to approve Changes, or to exercise any of the power and authority of the Owner or the Owner's Project Manager.

4.2.11 At the end of the last sentence of subparagraph 4.2.11 and add the following:

The Owner's Project Manager may, as the Owner's Project Manager judges desirable, issue additional drawings or instructions indicating in greater detail the construction or design of the various parts of the Work; such drawings or instructions may be effected by field order or other notice to the Contractor, and provided such drawings or instructions are reasonably consistent with the previously existing Contract Documents, the Work shall be executed in accordance with such additional drawings or instructions without additional cost or extension

of the Contract Time. If the Contractor claims additional cost or time on account of such additional drawings or instructions, the Contractor shall give the notice provided within the Contract for Construction.

4.2.13 Change subparagraph 4.2.13 to read as follows:

The Owner's Project Manager's decisions on matters relating to aesthetics of the site and building will be final. If a submitted or installed product is not located as required or is not of the scale and conformance illustrated in a submittals, it shall be removed and replaced with a more aesthetically suitable version at no additional cost as defined by solely by the Owner's Project Manager.

ARTICLE 5: SUBCONTRACTORS

5.2.5 Add new subparagraph 5.2.5 as follows:

The Contractor when sub-contracting with sub-bidders filed pursuant to M.G.L. c.149 §44F(4)(c) shall use the form of subcontract set forth in M.G.L. c.149, §44F. The form of subcontract for non-filed subbidders shall be submitted to the Owner for its approval, which shall not be, in the opinion of the Owner's Project Manager, unreasonably withheld or delayed. Each subcontract shall expressly provide for the contingent assignment referred to in subparagraph 5.4.1.

5.3.1 Add at the end of the first sentence of subparagraph 5.3.1:

"including without limitation the obligations set forth in subparagraph 3.18.2."

5.4.2 Delete subparagraph 5.4.2.

ARTICLE 6: CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1.4 Delete subparagraph 6.1.4.

6.2.4 Add the following at the end of subparagraph 6.2.4:

"If such separate contractor sues the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at the Owner's expense, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitration costs which the Owner has incurred."

6.2.5 Delete subparagraph 6.2.5.

ARTICLE 7: CHANGES IN THE WORK

7.2.2-  
7.2.4

Insert the following new subparagraphs 7.2.2 through 7.2.4:

7.2.2 A Change Order executed by the Owner and also by the Contractor without a Contractor's notice reserving right to claim additional adjustments constitutes an all-inclusive settlement for all changes and for all direct, supplemental, indirect, consequential, and cumulative costs and delays, and the Contractor's signature represents a waiver of any and all rights to file a claim on account of that Change Order, the work or the work involved in that Change Order. A Change Order executed by the Owner and also by the Contractor with a notice reserving right to claim additional adjustments, shall become final and binding on the Contractor, without consideration of his reservation of rights, unless the Contractor delivers to the Owner written notice of a claim within thirty days after the date when notice of a claim on account of the Change Order executed by the Owner comes due. The Owner and the Contractor shall sign Change Orders with reasonable promptness, as determined by the Owner's Project Manager. Amounts for work involved in a Change Order signed by the Owner may be included in Applications for Payment. Retainage is applicable to all Change Orders.

7.2.3 The Owner may direct such changes and unilaterally make or provide the basis for making an adjustment to Contract Sum or Contract Time. Upon receipt of such a unilateral

order, the Contractor shall promptly proceed or continue with the work involved as directed. Any such unilateral adjustment in Contract Sum or Contract Time made by Change Order shall be final and binding on the Contractor unless the Contractor delivers to the Owner written notice of a claim within thirty days after receipt of the unilateral order.

7.2.4\* (Statutory reference: M.G.L. c.30 §39I)

The Contractor shall perform all the work required by this contract in conformity with the plans and specifications contained herein. No willful and substantial deviation from said plans and specifications shall be made unless authorized in writing by the awarding authority or by the Owner's Project Manager in charge of the work who is duly authorized by the awarding authority to

approve such deviations. In order to avoid delays in the prosecution of the work required by such contract such deviation from the plans or specifications may be authorized by a written order of the awarding authority or such Owner's Project Manager so authorized to approve such deviation.

Within thirty days thereafter, such written order shall be confirmed by a certificate of the awarding authority stating: (1) If such deviation involves any substitution or elimination of materials, fixtures or equipment, the reasons why such materials, fixtures or equipment, the reasons why such materials, fixtures or equipment were included in the first instance and the reasons for substitution or elimination, and, if the deviation is of any other nature, the reasons for such deviation, giving justification therefor; (2) that the specified deviation does not materially injure the project as a whole; (3) that either the work substituted for the work specified is of the same cost and quality, or that an equitable adjustment has been agreed upon between the awarding authority and the Contractor and the amount in dollars of said adjustment; and (4) that the deviation is in the best interest of the awarding authority.

Such certificates shall be signed under the penalties of perjury and shall be a permanent part of the file record of the work contracted for.

7.3.4 Renumber former subparagraph 7.3.3 as 7.3.4

7.3.3 Add the following as new subparagraph 7.3.3:

7.3.3 Upon request of the Owner or the Owner's Project Manager, the Contractor shall without cost to the Owner submit to the Owner's Project Manager, in such form as the Owner's Project Manager may require, an accurate written estimate of the cost of any proposed extra Work or change. The estimate shall indicate the quantity and unit cost of each item of materials, and the number of hours of work and hourly rate for each class of labor, as well as the description and amounts of all other costs chargeable under the terms of this Article. Unit labor costs for the installation of each item of materials shall be shown in breakdown sufficient as determined by the Owner's Project Manager. Lump sum proposals are NOT acceptable. Any work performed under an approved lump sum proposal is subject to renegotiation and/or rejection of payment by the Owner. The Contractor shall promptly revise and resubmit such estimate if the Owner's Project Manager determines that it is not in compliance with the requirements of this Article, or that it contains errors of fact or mathematical errors or if it is a lump sum. In order to establish the exact cost of new Work added or of previously required Work omitted, the Contractor shall obtain and furnish to the Owner's Project Manager bona fide proposals from recognized suppliers for furnishing any material & labor breakdowns in detail included in such Work. Such estimates shall be furnished promptly so as to occasion no delay in the Work, and shall be furnished at the Contractor's expense. The Contractor shall state in the estimate any extension of time required for the completion of the Work if the change or extra work is ordered.

7.3.4.1 –  
7.3.4.3

Add the following as new subparagraph 7.3.4.1 – 7.3.4.3

7.3.4.1 The Contractor shall perform any Extra Work when and as ordered in writing by the Owner's Project Manager, and shall be compensated therefor at the Cost of the Extra Work plus a Contractor's Fee as set forth in this Article.

No Extra Work shall be paid for unless specifically ordered as such in writing by the Owner's Project Manager.

At the request of the Owner's Project Manager, the Contractor shall furnish itemized statements of the Cost of the Extra Work ordered as above and give the Owner's Project Manager access to all records, accounts, bills and vouchers and correspondence relating thereto. The

itemized statements shall be provided by the Contractor within seven days from the date the request is sent by the Owner's Project Manager.

The methods to be used to determine an adjustment in Contract Price necessitated by changes ordered or negotiated pursuant to this Agreement, or Extra Work covered by a submittal or a claim are limited to the following:

- a. Where the Extra Work is covered or is of the same character as work covered by lump sum prices in the Contract Documents: the basis of those lump sum prices.
- b. Where the Extra Work is covered or is of the same character as Unit Price Work: by application of those unit prices to the quantities of the items involved.
- c. Where the Extra Work is not covered by either of the methods specified in subparagraph a or b above: by mutual acceptance a lump sum price negotiated on the basis of the contractor's itemized estimate of the anticipated cost of the Extra Work, determined as specified in this Article, and a Contractor's Fee determined as one hundred (100%) of the fee allowed under this Article.
- d. Where the Extra Work is not covered by either of the methods specified in subparagraph a or b above, and the Owner's Project Manager directs the Contractor to proceed with the Extra Work with payments to be made on the basis of actual cost: Cost of the Extra Work, determined as specified in this Article, and a Contractor's Fee determined as seventy five percent (75%) of the fee allowed under this Article.
- e. Where the Extra Work is not covered by any of the preceding methods, and when payment is to be determined by a court of competent jurisdiction, the actual cost method shall be the method for determining the cost of the Extra Work.

In computing either anticipated, or actual cost, the term "Cost of the Extra Work" means the sum of all reasonable incremental costs which would be, or actually were, necessarily incurred by the Contractor in the proper performance of the Extra Work. Those costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall include only the appropriate items for labor, material/equipment, subagreement, equipment, and supplemental costs specified below.

Payroll costs shall be included for craft labor and first line supervision in the direct employ of the Contractor assigned to the site and engaged in furnishing and incorporating materials or equipment in the Extra Work. Payroll costs shall include wage plus the necessary labor burdens, which may include social security, unemployment, workers' compensation, health and retirement benefits, vacation and holiday pay, and other payments pursuant to union agreements. When determining payroll costs under subparagraphs d and e above, daily time sheets, certified at the end of each day by the Contractor, and filed with the Owner's Project Manager, shall be the record upon which actual payroll costs shall be based. When determining payroll cost under subparagraphs d and e above, daily time sheets shall be valid only if they expressly correlate to the Extra Work and if made when the Extra Work was performed.

Payments by the Contractor to Suppliers for all material and equipment in the Extra Work, including transportation and storage costs, and necessary Suppliers' field services shall be included. All trade discounts, rebates and refunds and all returns from sale of surplus items shall accrue to the Owner, and the Contractor shall make provisions so that they may be obtained. When required by the Owner's Project Manager, the Contractor shall obtain competitive bids from Suppliers and shall deliver such bids to the Owner's Project Manager. When determining actual material and equipment cost, actual invoices segregating items associated with the Extra Work shall be the record upon which actual costs shall be based.

Payments by the Contractor to Subcontractors for Extra Work performed by Subcontractors shall be included. If required by the Owner's Project Manager, the Contractor shall obtain competitive detailed bids from three (3) Subcontractors and shall deliver them to the Owner's Project Manager who will then determine which bid will be selected. When determining Subcontractor costs at any tier, the Subcontractor's Cost shall be determined in the same manner as the Contractor's Cost of the Extra Work. All subagreements shall be subject to the provisions of this Article insofar as applicable.

Equipment costs required solely in connection with the Extra Work reflecting rented or leased or owned equipment costs for individual construction equipment or machinery whose replacement

value is in excess of \$1,000.00 shall be included. Transportation, loading and unloading, installation, dismantling and removal cost shall be included only if such equipment is or was transported to the site solely to perform the Extra Work. Payroll costs for craft labor operating the equipment shall be as described above. Equipment costs shall be computed using the same accounting and estimating rules regardless of whether related to added or deleted items of work.

When determining equipment costs, daily records listing the equipment units, operators, and actual usage, and certified at the end of each day by Contractor, and filed with the Owner's Project Manager, shall be the record upon which actual equipment use shall be based. When determining equipment costs under subparagraphs d and e above, such daily records shall be valid only if they list the equipment units, their operators, and actual usage, and were developed when the Extra Work was performed.

Rented or owned equipment at the site and not in actual use as a direct result of the change, shall be paid at the rates for rented equipment as specified below. In no event shall the idle time claimed in a day exceed the established working schedule. Payments for idle equipment shall come due only as long as the equipment was idled solely by the actions of the Owner or Owner's Project Manager, and that the idle period exceeds that normally experienced for such equipment.

The fair rental for all machinery and equipment shall be based upon the most recent edition of "Rental Rate Bluebook for Construction Equipment" (the Bluebook), published by Nielson/Dataquest, or a similar publication approved by the Owner's Project Manager. Rental for machinery and equipment shall be based upon an appropriate fraction of the approved monthly rate schedule. If the Extra Work requires the use of machinery or equipment not already on the site of the Work, the cost of transportation, not exceeding a distance of 100 miles, of such machinery or equipment to and from the Work shall be added to the "fair monthly rental" provided, however, that this shall not apply to machinery or equipment already required to be furnished under the terms of the Contract Documents. In addition to rental or lease rate, operating costs shall not exceed the estimated hourly rate for the aforementioned guide. There shall be no operation costs allocated for idle time.

Hourly rates shall be developed by dividing the monthly Blue Book rates by 176 hours a month (the "weekly", hourly", and "daily" rate listed in the Blue Book shall not be used). Rates in all cases shall be adjusted by application of the Rate Adjustment Tables (machine and adjustment) plus adjustments to eliminate Equipment Overhead plus Regional Adjustments.

Standby rates shall be computed by using the full cost-of-facilities capital (CFC) hourly cost plus one half the hourly depreciation rate as used in the initial hourly calculation above.

The equipment rate for usage in excess of eight hours a day shall be fifty percent (50%) of the base hourly rate as established in the initial hourly calculation above.

The rates used for billing purposes will be those most economical to the Owner based on the circumstances of actual usage and all applicable credits and discounts.

For equipment rented or leased from lessor firms associated with or owned by the Contractor, the Contractor shall be entitled to reimbursement as though the equipment was owned equipment, as specified below.

For equipment owned by the Contractor, the Contractor shall be entitled to costs based on his normal accounting practices, but in no event shall those costs exceed the hourly rates as established above.

Supplemental costs may include the proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties concerned with the Extra Work, and the cost of materials, supplies and equipment installed in the Extra Work.

The Cost of the Extra Work shall not include any of the following costs, all of which are considered supplemental cost not allowed, administrative costs, or contingencies and covered by the Contractor's Fee:

- a. Cost already included in the Contract Price for the Work (including all previously authorized adjustments).
- b. Payroll costs and other compensation of personnel employed by the Contractor whether at the site or in the contractor's principal or a branch office for management,

administration or in support of the performance, management or administration of the Work, including, but not limited to, the Contractor's officers, executives, principals, general managers, project managers, construction managers, superintendents, estimators and schedulers, detailer, claims consultants, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, Owner's Project Managers, Owner's Project Managers, timekeepers, and clerks.

- c. Expenses of the Contractor's principal and branch offices including, but not limited to, Contractor's office and temporary facilities at the site.
- d. Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Extra Work and charges for delinquent payments.
- e. Costs of premiums for all Bonds and for all insurance whether or not Contractor is required to purchase and monitor the same.
- f. Costs due to the fault or negligence of the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, deposits to be lost, costs to correct defective work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- g. Costs of a rental of small tools; costs of a rental of building.
- h. Cost associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation of filing of claims.
- i. Expenses of the contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings or unpaid retainage.
- j. Costs derived from the computation of a "home office overhead" rate by application of the Eichleay, Allegheny, Burden Fluctuation, or other similar methods.
- k. Cost of special consultants or attorneys, whether or not in the direct employ of the Contractor, employed for services specifically related to the resolution of a claim, dispute, or other matter relating to the acceptability of the Work.
- l. Acceleration costs incurred as an alternative to an extension of Contract Time on account of delays not meeting the requirements for extensions in Contract Time.
- m. Escalation cost for any part of the Work which is not delayed beyond the applicable Late Dates in the Construction Schedule required by Section 01 3216.19 CPM Schedule of the Specifications.
- n. Delay cost.
- o. Other administrative expense or contingent costs of any kind, and the cost of any item not specifically and expressly included in this Article.

The Contractor's Fee, (profit), in connection with the Extra Work shall not exceed the following percentages of the various portions in the Cost of the Extra Work:

- a. For the Contractor's labor cost, the Contractor's Fee shall not exceed fifteen percent (15%).
- b. For the Contractor's material/equipment or construction equipment costs, the Contractor's Fee shall not exceed ten percent (10%).
- c. For subcontractor costs, and for Extra Work performed by (a) a subcontractor having a direct subagreement with the Contractor, the Contractor's Fee shall not exceed five percent (5%) of the cost of the Extra Work excluding lower tier fees, and the subcontractor's Fee shall not exceed ten percent (10); b) a lower tier Subcontractor, the Contractor's Fee and the corresponding first tier Subcontractor's Fee shall not exceed five percent (5%) each, and the lower tier subcontractor's Fee shall not exceed ten percent (10%).

No Contractor's fee shall be payable on the basis of Subcontractor's Fees.

The credit to be allowed by the Contractor to the Owner for any individual change in the work (combining additions and deletions) which results in a net decrease in cost (Cost of the Extra Work in negative), shall be the amount of the actual net decrease together with a deduction for the Contractor's Fee equal to one hundred percent (100%) of the maximum Fee which would be allowed under the preceding paragraphs.

When more than one individual change, each resulting in a net increase or decrease in the cost of the Extra Work, is covered in one specific Change Order or submittal or claim, the adjustment in the Contractor's Fee shall be the sum of the individual Fees. For Credit Change Orders, the Contractor shall provide detailed hours and staff skills, tool or equipment rentals comparing added work change orders to deduct work change orders and prove why the deduct work change order is the proposed dollar amount.

7.3.4.2 If the Owner elects to determine the cost of the Work as provided in method (b) above using unit prices stated in the Contract Documents or subsequently agreed upon, the unit prices shall be subject to subparagraph 7.1.4. Notwithstanding the inclusion of unit prices in the Contract Documents, it shall be the Owner's option to require the Cost of any given change to be determined by one of the other methods stated in 7.3.4.1. If the Owner elects to determine the Cost of the change work by unit prices and the nature of the work is such that its extent cannot readily be measured after the completion of such work or any subsequent work, the Contractor shall keep daily records, available at all times to the Owner's Project Manager for inspection, of the actual quantities of such work put in place, and delivery receipts or other adequate evidence, acceptable to the Owner's Project Manager, indicating the quantities of materials delivered to the site for use in such unit price work, and distinguishing such from other similar material delivered for use in work included in the base Contract Sum. If so required by the Owner's Project Manager, materials for use in unit price work shall be stored apart from all other materials on the Project.

7.3.4.3 If the Owner elects to determine the cost of the Work as provided in methods (d) or (e) of subparagraph 7.3.4.1 or if the method of determining the cost has not been established before the work is begun, the Contractor shall keep detailed daily records of labor and materials costs applicable to the work.

7.3.4 Renumber former subparagraph 7.3.4 as 7.3.5.

7.3.5 Renumber former subparagraph 7.3.5 as 7.3.6.

7.3.6-  
7.3.9 Delete former subparagraph 7.3.6 and subparagraphs 7.3.7 and 7.3.9.

7.3.7 Insert new subparagraph 7.3.7

7.3.7 Extension Of Time: When Extra Work is ordered near the completion of the work or at any time during the progress of the Work which unavoidably increases the time for the completion of the Work, an extension of time shall be granted as hereinbefore provided. Extra Work which is not on the critical path of the Construction Schedule required by Section 01 3216.19 CPM Schedule of the Specifications will not be considered.

The criteria to be used to determine and adjustment in contract Time necessitated by changes ordered or negotiated pursuant to this Agreement, or work covered by a submittal or a claim, are limited to the following:

An adjustment in Contract Time will be based solely upon net increases in the time required for the performance or completion of parts of the Work that negatively impact the Critical Path of the Construction Schedule. However, even if time required for the performance or completion of controlling parts of the Work is extended, an extension in Contract Time will not be granted until all of the available Total Float in the Construction Schedule is consumed and performance or completion of the controlling Work necessarily extends beyond the Contract Time.

The Owner may elect, at its sole discretion, to grant an extension in Contract Time, without the Contractor's request, because of delays meeting the requirements set forth below.

An extension in Contract Time will not be granted unless the Contractor can demonstrate through an analysis of the Construction Schedule that the increases in the time to perform or complete the Work, or specified part of the Work, beyond the corresponding Contract



Time(s) arise from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and his subcontractors, suppliers or other persons or organizations, and that such causes in fact lead to performance or completion of the Work, or specified part in question, beyond the corresponding Contract Time, despite the Contractor's reasonable and diligent actions to guard against those effects. Examples of such causes include acts of God, acts of government, unavoidable strikes, certain extra work, or other causes or contingencies clearly beyond the control or responsibility of the Contractor.

It is the intent of the Contract Documents that an extension in Contract Time, if any granted, shall be the Contractor's sole and exclusive remedy for any delay, disruption, interference, or hindrance and associated costs, however caused, resulting from causes contemplated in the paragraphs above.

7.5 Add new Paragraph 7.5 as follows:

**7.5\* CERTIFICATE OF APPROPRIATIONS**

7.5.1\* Statutory reference: M.G.L. c.44 §31C)

This contract shall not be deemed to have been made until the auditor or accountant or other officer of the city or town having similar duties has certified thereon that an appropriation in the amount of this contract is available therefor and that an officer or agent of the city, town, or awarding authority has been authorized to execute said contract and approve all requisitions and change orders. No order to the Contractor for a change in or addition to the work, whether in the form of a drawing, plan, detail or any other written instruction, unless it is an order which the Contractor is willing to perform without any increase in the contract price, shall be deemed to be given until the auditor or accountant, or other officer of the awarding authority having similar duties, has certified thereon that an appropriation in the amount of such order is available therefore; but such certificate shall not be construed as an admission by the awarding authority of its liability to pay for such work. The certificate of the auditor or accountant or other officer of the awarding authority having similar duties, that an appropriation in the amount of this contract or in the amount of such order is available shall bar any defense by the awarding authority on the grounds of insufficient appropriation.

**ARTICLE 8: TIME**

8.2.2 Delete subparagraph 8.2.2.

8.2.4-

8.2.10 Add new subparagraphs 8.2.4 through 8.2.10 as follows:

8.2.4 At least 10 working days before the first Application for Payment, the Contractor shall submit to the Owner's Project Manager a Progress Schedule showing for each class of work included in the Schedule of Values, the percentage completion to be obtained and the total dollar value of work to be completed as of the first of each month until Substantial Completion. All calculations shall be on the basis of work in place, but not including the value of materials delivered but not in place. It shall also include project Cash Flow analysis referenced in other sections of this manual.

8.2.5 The Progress Schedule shall be based on an orderly progression of the Work, allowing adequate time for each operation (including adequate time for submission and review of submittals), and leading to a reasonable certainty of Substantial Completion by the date established in the Agreement. The Progress Schedule will be reviewed by the Owner's Project Manager for compliance with the requirements of this Article and will be accepted by the Owner's Project Manager or returned to the Contractor for revision and resubmittal. Unless specifically required by law, no payment under this Contract shall be due until the Progress Schedule has been approved by the Owner's Project Manager. The Owner's Project Manager's review of the Progress Schedule shall not impose any duty on the Owner's Project Manager or the Owner with respect to the timing, planning, scheduling, or execution of the Work. In particular, if the Contractor proposes a Progress Schedule indicating a date of Substantial Completion which is earlier than the Contract Time, the Contractor shall not be entitled to additional payment or compensation of any kind if, for any reason, the full Contract Time is required to achieve Substantial Completion of the Work. The Progress Schedule shall include at least 4 weeks of Float.

8.2.6 If in any Application for Payment the total value of the completed Work in place, as certified by the Owner's Project Manager, is less than 90% of the total value of the Work in

place estimated in the Progress Schedule, the Owner may, at the Owner's option, require the Contractor to accelerate the progress of the Work without cost to the Owner by increasing the work force or hours of work, or by other reasonable means approved by the Owner's Project Manager.

8.2.7 If each of three successive applications, as certified by the Owner's Project Manager, indicate that the actual Work completed is less than 90% of the values estimated in the Progress Schedule to be completed by the respective dates, the Owner may at the Owner's option, treat the Contractor's delinquency as a default justifying the action permitted under Paragraph 14.2.

8.2.8 If the Owner's Project Manager has determined that the Contractor should be permitted to extend the time for completion as provided in Paragraph 8.3, the calendar dates in the Progress Schedule shall be adjusted accordingly to retain their same relationship to the adjusted date of Substantial Completion, and the dollar value of Work to be completed as of the first of each month shall be adjusted pro rata.

8.2.9 If the Contractor fails to submit any Application for Payment in any month, the Owner's Project Manager shall, for the purpose of this evaluation of progress, certify separately to the actual value of the Work in place completed as of the first of the month to the best of the Owner's Project Manager's knowledge.

8.2.10 Nothing herein shall limit the Owner's right to liquidated or other damages for delays by the Contractor or to any other remedy which the Owner may possess under other provisions of the Contract Documents or by law.

8.3.3- Change subparagraph 8.3.3 and add new subparagraphs 8.3.4  
8.3.7 through 8.3.7, as follows:

8.3.3 No claim for extension of time shall be allowed on account of failure of the Owner's Project Manager to furnish Drawings, Specifications or instructions or to return Shop Drawings or Samples until 21 days after receipt by the Owner's Project Manager by registered or certified mail of written demand for such instructions, Drawings, or Samples, and not then unless such claim be reasonable.

8.3.4 No extension of time shall be granted because of seasonal or abnormal variations in temperature, humidity or precipitation, which conditions shall be wholly at the risk of the Contractor, whether occurring within the time originally scheduled for completion or within the period of any extension granted. There shall be no increase in the Contract Sum on account of any additional costs of operations or conditions resulting therefrom.

8.3.5 The Contractor hereby agrees that the Contractor shall have no claim for damages of any kind against the Owner or the Owner's Project Manager on account of any delay in the commencement of the Work and/or any hindrance, delay or suspension of any portion of the Work, whether such delay is caused by the Owner, the Owner's Project Manager, or otherwise, except as and to the extent expressly provided under M.G.L. c.30, §390 in the case of written orders by the Owner. The Contractor acknowledges that the Contractor's sole remedy for any such delay and/or suspension will be an extension of time as provided in this Article.

8.3.6\* (Statutory reference: M.G.L. c.30 §390)

(a) The awarding authority may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the awarding authority; provided, however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the awarding authority to act within the time specified in this contract, the awarding authority shall make an adjustment in the contract prices for any increase in the cost of performance of this contract but shall not include any profit to the Contractor on such increase; and provided further, that the awarding authority shall not make any adjustment in the contract price under this provisions for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.

(b) The Contractor must submit the amount of a claim under provision (a) to the awarding authority in writing as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this contract

and, except for costs due to a suspension order, the awarding authority shall not approve any costs in the claim incurred more than twenty days before the Contractor notified the awarding authority in writing of the act or failure to act involved in the claim.

In the event a suspension, delay, interruption or failure to act of the awarding authority increases the cost of performance to any Subcontractor, that Subcontractor shall have the same rights against the Contractor for payment for an increase in the cost of his performance as provisions (a) and (b) give the Contractor against the awarding authority, but nothing in provisions (a) and (b) shall in any way change, modify or alter any other rights which the Contractor or the Subcontractor may have against each other.

8.3.7 The rate of progress shall be such that the Work shall be performed and completed in accordance with the Contract before the expiration of the time limit stipulated in the Agreement, except as otherwise expressly provided herein.

The time of commencement, any interim milestones and final completion of the Work in accordance with the Contract Documents are essential conditions of this Agreement.

It is agreed that the rate of progress herein required has been purposely set low enough to allow for the ordinary and foreseeable delays incident to construction work of this character. No extension of time will be given for ordinary or foreseeable delays, inclement weather, or accidents and the occurrence of such will not relieve the Contractor from the necessity of maintaining this rate of progress and completing the Work within the stipulated time limit.

If delays are caused by acts of God, acts of government, unavoidable strikes, extra work, or other causes or contingencies clearly beyond the control or responsibility of the Contractor, the Contractor may be entitled to additional time to perform and complete the Work, provided that the Contractor shall, within ten (10) days from the beginning of such delay notify the Owner in writing, with a copy to the Owner's Project Manager, of the cause and particulars of the delay. Upon receipt of such notification, the Owner shall review and evaluate the cause and extent of the delay. If, under the terms of the Agreement, the delay is properly excusable, the Owner will, in writing, appropriately extend the time for completion of the Work. (This paragraph shall be interpreted to include delays in receipt of equipment provided that the Contractor placed his order and submitted shop drawings for such equipment promptly after execution of the Contract, that he has shown due diligence in following the progress of the order, and that the time required for delivery is in accordance with conditions generally prevailing in the industry.) The Contractor agrees that he shall not have or assert any claim for nor shall he be entitled to any additional compensation or damages on account of such delays. The time in which the Work is to be performed and completed is of the essence of this Agreement. Where, in accordance with the Contract Documents additional time is allowed for completion of any work, the new time fixed by such extension shall be of the essence of this Agreement.

8.4 Add new Paragraph 8.4 as follows:

#### 8.4 LIQUIDATED DAMAGES

If the Contractor shall fail to achieve Substantial Completion within the Contract Time, it shall be liable to pay the Owner the daily amount specified in the Agreement (or Contract), not as a penalty, but as fixed and agreed upon damages for breach of contract. The said amount is fixed and agreed upon because of the difficulty of ascertaining the Owner's actual damages. It is mutually understood that the said amount is a reasonable approximation or estimate thereof as of the date of the Agreement (or Contract). The said amount may be withheld from periodic or final payments due to the Contractor, in addition to retainage and other back charges.

### ARTICLE 9: PAYMENTS AND COMPLETION

9.1.2 Add at the end of the first sentence of subparagraph 9.1.2:

"and shall be revised if later found by the Owner's Project Manager to be inaccurate."

9.3.1.1 Add to the end of subparagraph 9.3.1.1:

"when such Construction Change Directives have set forth an adjustment to the Contract Sum."

9.3.2 At the end of this subparagraph, add the following:

In no case shall stored materials or equipment, whether stored at the site or at some other location, be considered for payment of stored material unless, in the judgment of the Owner, the materials or equipment are ready for and actually scheduled for prompt use. Written request for payment of stored material must be made thirty days in advance of the due date for the Application for Payment. Payment for materials or equipment stored onsite shall require submission and approval of a valid invoice indicating the unit quantity, description of the material or equipment and cost. Payment for materials stored offsite shall require submission and approval of (1) a valid invoice indicating the unit quantity, description of the material or equipment and cost, (2) bill of sale naming the Owner as purchaser, (3) certified statement stating the exact location of the materials or equipment, that the material or equipment is properly stored and protected, and that it will be diverted for use and installation at a different project, (4) an All Risk insurance certificate for the full invoiced value of the items, with Owner as certificate holder, insured party, and payee in case of loss, with no deductible attached, and a minimum thirty day notice of cancellation to the certificate holder, (5) a fully executed Bailment Agreement. Further, the Contractor shall pay all costs associated for the Owner's Project Manager or Owner to make a verification visit to the storage location.

9.3.3 Change subparagraph 9.3.3 to read as follows:

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens." The Contractor further agrees that the submission of any Application for Payment shall conclusively be deemed to waive all liens with respect to said Work to which the Contractor may then be entitled, provided that such waiver of the lien rights shall not waive the Contractor's right to payment for such Work.

9.3.4 Add new subparagraph 9.3.4 as follows:

9.3.4 Each Application for Payment or periodic estimate requesting payment shall be accompanied by a certificate from each Subcontractor and supplier stating that the Subcontractor or supplier has been paid all amounts due them on the basis of the previous periodic payment to the Contractor, or else stating the amount not so paid and the reason for the discrepancy. In the event of any such discrepancy, the Contractor shall furnish the Contractor's own written explanation to the Owner through the Owner's Project Manager. Such waiver or certificate shall be in a form acceptable to the Owner.

9.5.1 In subparagraph 9.5.1, change item .6 and add a new item .8 as follows:

.6 reasonable, in the opinion of the Owner's Project Manager, evidence that the Work will not be completed within the Contract Time, and that retainage currently held by the Owner would not be adequate to cover actual or liquidated damage for the anticipated delay;

.8 failure of mechanical trade or electrical trade subcontractors to comply with mandatory requirements for maintaining record drawings. The Contractor shall check record drawings each month. Written confirmation that the record drawings are current will be required by the Owner's Project Manager before approval of the Contractor's monthly payment requisition.

9.6.1 In Add new Sub-subparagraphs 9.6.1.1 through 9.6.1.4, as follows: (Statutory reference: M.G.L. c.30§39K)

9.6.1.1\* Within fifteen days (twenty-four days in the case of the Commonwealth) after receipt from the Contractor, at the place designated by the awarding authority if such a place is so designated, of a periodic estimate requesting payment of the amount due for the preceding month, the awarding authority will make a periodic payment to the Contractor for the work performed during the preceding month and for the materials not incorporated in the work but delivered and suitably stored at the site (or some location agreed upon in writing) to which the Contractor has title or to which a Subcontractor has title and has authorized the Contractor to transfer title to the awarding authority, less (1) a retention based on its estimate of the fair value of its claims against the Contractor and less (2) a retention for direct payments to Subcontractors based on demands for same in accordance with the provisions of Subparagraph 9.2, and less (3) a retention not exceeding five percent of the approved

amount of the periodic payment. After the receipt of a periodic estimate requesting final payment and within sixty-five days after (a) the Contractor fully completes the work or substantially completes the work so that the value of the work remaining to be done is, in the estimate of the awarding authority, less than one percent of the original contract price, or (b) the Contractor substantially completes the work and the awarding authority takes possession for occupancy, whichever occurs first, the awarding authority shall pay the contractor the entire balance due on the contract less (1) a retention based on its estimate of the fair value of its claims against the Contractor and of the cost of completing the incomplete and unsatisfactory items of work and less (2) a retention for direct payments to Subcontractors based on demands for same in accordance with the provisions of Paragraph 1.9 of these Supplementary General Conditions, or based on the record of payments by the Contractor to the Subcontractors under this contract if such record of payment indicates that the Contractor has not paid Subcontractors as provided in Paragraph 1.9. If the awarding authority fails to make payment as herein provided, there shall be added to each such payment daily interest at the rate of three percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston commencing on the first day after said payment is due and continuing until the payment is delivered or mailed to the contractor; provided, that no interest shall be due, in any event, on the amount due on a periodic estimate for final payment until fifteen days (twenty-four days in the case of the Commonwealth) after receipt of such periodic estimate from the Contractor, at the place designated by the awarding authority if such a place is so designated. The Contractor agrees to pay to each Subcontractor a portion of any such interest paid in accordance with the amount due each Subcontractor.

9.6.1.2\* The awarding authority may make changes in any periodic estimate submitted by the Contractor, and the payment due on said periodic estimate shall be computed in accordance with the changes so made, but such changes or any requirement for a corrected periodic estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided, that the awarding authority may, within seven days after receipt, return to the Contractor for correction, any periodic estimate which is not in the required form or which contains computations not arithmetically correct and, in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter.

9.6.1.3\* All periodic estimates shall be submitted to the awarding authority, or to its designee as set forth in writing to the Contractor, and the date of receipt by the awarding authority or its designee shall be marked on the estimate. All periodic estimates shall contain a separate item for each filed subtrade and each sub-subtrade listed in sub-bid form as required by specifications and a column listing the amount paid to each subcontractor and sub-subcontractor as of the date the periodic estimate is filed. The person making payment for the awarding authority shall add the daily interest provided for herein to each payment for each day beyond the due date based on the date of receipt marked on the estimate.

9.6.1.4\* A certificate of the Owner's Project Manager to the effect that the Contractor has fully or substantially completed the work shall, subject to the provisions of Subparagraph 4.6.2 be conclusive for the purposes of this Subparagraph 9.6.1.

9.6.2 Add new Sub-subparagraphs 9.6.2.1 through 9.6.2.13, as follows: (Statutory reference: M.G.L. c.30 §39F)

9.6.2.1\* Forthwith after the Contractor receives payment on account of a periodic estimate, the Contractor shall pay to each Subcontractor the amount paid for the labor performed and the materials furnished by that Subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the Subcontractor by the Contractor.

9.6.2.2\* Not later than the sixty-fifth day after each Subcontractor substantially completes his work in accordance with the plans and specifications, the entire balance due under the subcontract, less amounts retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the Subcontractor; and the awarding authority shall pay that amount to the Contractor. The Contractor shall forthwith pay to the Subcontractor the full amount received from the awarding authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the Subcontractor by the Contractor.

9.6.2.3\* Each payment made by the awarding authority to the Contractor pursuant to Sub-subparagraphs 9.6.2.1 and 9.6.2.2 for the labor performed and the materials furnished by a Subcontractor shall be made to the Contractor for the account of that Subcontractor; and the awarding authority shall take reasonable steps to compel the Contractor to make each such payment to each such Subcontractor. If the awarding authority has received a demand for direct payment from a Subcontractor for any amount which has already been included in a payment to the Contractor or which is to be included in a payment to the Contractor for payment to the Subcontractor as provided in Sub-subparagraphs 9.6.2.1 and 9.6.2.2, the awarding authority shall act upon the demand as provided in this Subparagraph 9.6.2.

9.6.2.4\* If, within seventy days after the Subcontractor has substantially completed the subcontract work, the Subcontractor has not received from the Contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the Contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the Subcontractor may demand direct payment of that balance from the awarding authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the awarding authority, and a copy shall be delivered to or sent by certified mail to the Contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the Subcontractor has substantially completed the subcontract work. Within ten days after the Subcontractor has delivered or so mailed the demand to the awarding authority and delivered or so mailed a copy to the Contractor, the Contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the awarding authority, and a copy shall be delivered to or sent by certified mail to the Subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract, including any amount due for extra labor and materials furnished to the Contractor and of the amount due for each claim made by the Contractor against the Subcontractor.

9.6.2.5\* Within fifteen days after receipt of the demand by the awarding authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the awarding authority shall make direct payment to the Subcontractor of the balance due under the subcontract, including any amount due for extra labor and materials furnished to the Contractor, less any amount (i) retained by the awarding authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the Contractor in the sworn reply; provided that the awarding authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by Sub-subparagraph 9.6.2.4. The awarding authority shall make further direct payments to the Subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided in parts (i) and (ii) of this Sub-paragraph.

9.6.2.6\* The awarding authority shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of Sub-subparagraph 9.6.2.5 in an interest-bearing joint account in the names of the Contractor and the Subcontractor in a bank in Massachusetts selected by the awarding authority or agreed upon by the Contractor and the Subcontractor and shall notify the Contractor and the Subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the Contractor and the Subcontractor or as determined by decree of a court of competent jurisdiction.

9.6.2.7\* All direct payments and all deductions from demands for direct payments deposited in an interest-bearing account or accounts in a bank pursuant to Sub-subparagraph 9.6.2.6 shall be made out of amounts payable to the Contractor at the time of receipt of a demand for direct payment from a Subcontractor and out of amounts which later become payable to the Contractor and in the order of receipt of such demands from subcontractors. All direct payments shall discharge the obligation of the awarding authority to the Contractor to the extent of such payment.

9.6.2.8\* The awarding authority shall deduct from payments to a Contractor amounts which, together with the deposits in interest-bearing accounts pursuant to Sub-subparagraph 9.6.2.6, are sufficient to satisfy all unpaid balances of demands for direct payment received from Subcontractors. All such amounts shall be earmarked for such direct payments, and the

Subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the Contractor.

9.6.2.9\* If the Subcontractor does not receive payment as provided in Sub-subparagraph 9.6.2.1 or if the Contractor does not submit a periodic estimate for the value of the labor or materials performed or furnished by the Subcontractor and the Subcontractor does not receive payment for same when due less the deductions provided for in Sub-subparagraph 9.6.2.1, the Subcontractor may demand direct payment by following the procedure in Sub-subparagraph 9.6.2.4 and the Contractor may file a sworn reply as provided in that same Sub-subparagraph. A demand made after the first day of the month following that for which the Subcontractor performed or furnished the labor and materials for which the Subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a periodic estimate from the Contractor. Thereafter the awarding authority shall proceed as provided in Sub-subparagraphs 9.6.2.5 through 9.6.2.8.

9.6.2.10\* Any assignment by a Subcontractor of the rights under this section to a surety company furnishing a bond under the provisions of M.G.L. c.149, §29 shall be invalid. The assignment and subrogation rights of the surety to amounts included in a demand for direct payment which are in the possession of the awarding authority or which are on deposit pursuant to Sub-subparagraph 9.6.2.6 shall be subordinate to the rights of all Subcontractors who are entitled to be paid under this section and who have not been paid in full.

9.6.2.11\* "Subcontractor" as used in Sub-subparagraphs 9.6.2.1 through 9.6.2.13 shall mean a person who files a sub-bid and receives a subcontract as a result of that filed sub-bid or who is approved by the awarding authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the Contractor.

9.6.2.12\* A Contractor or a Subcontractor shall enforce a claim to any portion of the amount of a demand for direct payment deposited as provided in Sub-subparagraph 9.6.2.6 by a petition in equity in the superior court against the other and the bank shall not be a necessary party. A Subcontractor shall enforce a claim for direct payment or a right to require a deposit as provided in Sub-subparagraph 9.6.2.6 by a petition in equity in the superior court against the awarding authority and the Contractor shall not be a necessary party. Upon motion of any party the court shall advance for speedy trial any petition filed as provided in this paragraph. M.G.L. c.231, §§59 and 59B shall apply to such petitions. The court shall enter an interlocutory decree upon which execution shall issue for any part of a claim found due pursuant to §§59 and 59B and, upon motion of any party, shall advance for speedy trial the petition to collect the remainder of the claim. Any party aggrieved by such interlocutory decree shall have the right to appeal therefrom as from a final decree. The court shall not consolidate for trial the petition of any Subcontractor with the petition of one or more Subcontractors or the same general contract unless the court finds that a substantial portion of the evidence of the same events during the course of construction (other than the fact that the claims sought to be consolidated arise under the same general contract) is applicable to the petitions sought to be consolidated and that such consolidation will prevent unnecessary duplication of evidence. A decree in any such proceeding shall not include interest on the disputed amount deposited in excess of the interest earned for the period of any such deposit. No person except a Subcontractor filing a demand for direct payment for which no funds due the Contractor are available for direct payment shall have a right to file a petition in a court of equity against the awarding authority claiming a demand for direct payment is premature, and such Subcontractor must file the petition before the awarding authority has made a direct payment to the Subcontractor and has made a deposit of the disputed portion as provided in part (iii) of Sub-subparagraph 9.6.2.5 and in Sub-subparagraph 9.6.2.6.

9.6.2.13\* In any petition to collect any claim for which a Subcontractor has filed a demand for direct payment the court shall, upon motion of the Contractor, reduce by the amount of any deposit of a disputed amount by the awarding authority as provided in part (iii) of Sub-subparagraph 9.6.2.5 and in Sub-subparagraph 9.6.2.6 any amount held under a trustee writ or pursuant to a restraining order or injunction.

9.6.3 Delete subparagraph 9.6.3.

9.6.4 Change the last sentence in subparagraph 9.6.4 to read as follows:

9.6.4 Neither the Owner nor Owner's Project Manager shall have an obligation to pay or to see to the payment of money to a Subcontractor, Sub-subcontractor or material supplier.

9.6.5 Delete subparagraph 9.6.5.

9.7.1 Delete the words "or awarded by arbitration" from line 6 of subparagraph 9.7.1.

9.8.1 Add at the end of subparagraph 9.8.1:

"and only minor items which can be corrected or completed without any material interference with the Owner's use of the Work remain to be corrected or completed".

9.8.2 Replace subparagraph 9.8.2 with the following:

When the Contractor considers that the Work, or a portion thereof designated in the Contract Documents for separate completion, is substantially complete and the premises comply with subparagraph 3.15.1, the Contractor shall submit to the Owner's Project Manager (1) a list of items to be completed or corrected, (2) all special warranties required by the Contract Documents, endorsed by the Contractor and in a form reasonably acceptable to the Owner's Project Manager and (3) the permits and certificates referred to in subparagraph 13.5.4. The failure to include any items on the list mentioned in the preceding sentence does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Owner's Project Manager on the basis of an inspection determines that the Work or designated portion thereof is substantially complete and the other conditions have been met, the Owner's Project Manager will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

9.9.1 Change subparagraph 9.9.1 to read as follows:

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage. Such partial occupancy or use may begin whether or not the portion is substantially complete, and occupancy shall not imply substantial completion, provided that the respective responsibilities of the Owner and Contractor with respect to payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work, insurance, correction of the Work, and warranties shall be established by agreement of the Owner and Contractor or, absent such agreement, shall be determined by the Owner's Project Manager subject to the right of either party to contest such determination in Court.

#### ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY

10.1.2-

10.1.4 Delete subparagraphs 10.1.2, 10.1.3, and 10.1.4.

10.2.1.2 In subparagraph 10.2.1.2, delete the word "and" at the end of the subparagraph.

10.2.1.3 In subparagraph 10.2.1.3, add the word "and" to the end of the subparagraph.

10.2.1.4 Add new subparagraph 10.2.1.4 as follows:

.4 any other property of the Owner, whether or not forming part of the Work, located at the site or adjacent thereto in areas to which the Contractor has access.

10.2.5 Replace subparagraph 10.2.5 with the following:



- 10.2.9- The Contractor shall promptly remedy damage and loss to property referred to in clauses  
10.2.13 10.2.1.2, 10.2.1.3 and 10.2.1.4. If the damage or loss is due in whole or in part to the Contractor's failure to take the precautions required by this Paragraph 10.2, the Contractor shall, subject to any reimbursement to which the Contractor is entitled under property insurance required by the Contract Documents, bear the cost. The Contractor shall be fully and solely responsible for all Work and other operations carried out on adjacent properties. The insurance required under Article 11 shall cover such Work or operations, and the Contractor shall indemnify and defend the Owner, the Owner's Project Manager, and the owners of such adjacent properties from and against all claims, suits, losses or costs arising out of such Work or operations.

Add new subparagraphs 10.2.8 through 10.2.13 as follows:

10.2.9 The Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations regarding fire protection made by the representatives of the fire insurance company carrying insurance on the Work or by the local fire chief or fire marshal. The area within the site limits shall be kept orderly and clean, and all combustible rubbish shall be promptly removed from the site.

10.2.10 The Contractor shall at all times protect excavations, trenches, buildings and materials, from rain water, ground water, backup or leakage of sewers, drains and other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Contractor shall provide and operate all pumps, piping and other equipment necessary to this end.

10.2.11 The Contractor shall remove snow and ice which might result in damage or delay.

10.2.12\* (Statutory reference: M.G.L. c.149 §44F)

The Contractor shall install weather protection and furnish adequate heat in the protected area from November 1 to March 31, as required by M.G.L. c.149 §44F(1).

10.2.13 mes when the Contractor's personnel are not present, from commencement of the Work until Substantial Completion, to assure that the Work, and all materials and equipment stored at the Site, are fully and completely protected against loss or damage due to vandalism, theft, or malicious mischief. If the Contractor fails to comply with the requirements of this Sub-paragraph 10.2.12, then the Owner may provide appropriate security, and change the cost thereof to the Contractor. The Owner's provision of such security, or failure to do so, shall not relieve the Contractor of its sole responsibility to pay for loss or damage due to vandalism, theft, or malicious mischief at the Site.

#### ARTICLE 11: INSURANCE AND BONDS

11.1.1 In the first sentence of subparagraph 11.1.1 following the word "located" insert the words "and to which the Owner has no reasonable objection".

11.1.1.1 Add new Sub-subparagraph 11.1.1.1 to read as follows:

11.1.1.1\* (Statutory reference: M.G.L. c.149, §34A)

The Contractor shall, before commencing performance of the contract, provide by insurance for the payment of compensation and the furnishing of other benefits under M.G.L. c.152 to all persons to be employed under the contract, and the Contractor shall continue such insurance in full force and effect during the term of the contract. Sufficient proof of compliance with this Sub-subparagraph 11.1.1.1 must be furnished at the time of execution of this contract. Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of the contract and shall operate as an immediate termination thereof. No cancellation of such insurance, whether by the insurer or by the insured, shall be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the awarding authority at least fifteen days prior to the intended effective date thereof, which date shall be expressed in said notice.

11.1.2 Change subparagraph 11.1.2 to read as follows:

11.1.2 The insurance required by subparagraph 11.1.1 shall include all major divisions of coverage, and shall be on a comprehensive general basis including Premises and Operations (including X-C-U), Owner's and Contractor's Protective, Products and Completed Operations, and Owned, Non owned, and Hired Motor Vehicles (Save Harmless Agreement for Owner and Owner's Project Manager set forth in 3.18 of General Conditions). Such insurance shall be written for not less than any limits of liability required by law or the following limits, whichever are greater:

Employer's Liability:

Combined Single Limit: \$1,000,000

Workers Compensation: As required by the General Laws of the Commonwealth of Massachusetts, M.G.L. c. 149, §34A.

Comprehensive General Liability Insurance: Owner's and Contractor's Protective

Insurance: Each Occurrence: \$2,000,000  
Aggregate: \$2,000,000

Commercial General Liability Insurance:

General Aggregate: \$2,000,000  
Products/Completed  
Operations Aggregate: \$2,000,000  
Personal Injury and  
Advertising Limit: \$2,000,000  
Each Occurrence: \$2,000,000

\* Aggregates shall apply to this project only (aggregates not to include other projects and shall be identified as such on the certificate of insurance). "Claims made" form is not acceptable. General Contractor Completed Operations coverage must not exclude hazardous materials.

Motor Vehicle Insurance, including all owned, non-owned, hired and leased

vehicles: Combined Single Limit: \$1,000,000  
  
Bodily Injury: \$1,000,000 per  
person \$1,000,000 per occurrence  
  
Property Damage: \$500,000 per occurrence

Excess Liability (Umbrella) Insurance (to provide in excess for Employers Liability, Commercial Liability and Automobile Liability policies required herein:

\$10,000,000 per occurrence  
\$10,000,000 general policy aggregate

Copies of the foregoing insurance policies and certificates shall be provided to the Owner within thirty (30) days of the execution of the Agreement. Renewed certificates must be forwarded by the Contractor prior to the expiration date of any of the initial insurance.

All insurance shall be written on an occurrence basis. Coverages shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. The Town of Northbridge shall be added as an Additional Insured on all policies.

All certificates of insurance shall contain substantially the following statement: "The insurance covered by this certificate shall not be canceled, nor materially altered, except after thirty days prior written notice to the Town of Northbridge."

The Contractor shall be responsible for and maintain property insurance coverage at his option and expense to cover tools, equipment, etc., owned or rented, the capital value of which is not included in the cost of the Work.

All policies are to be written by insurance companies licensed to do business in the Commonwealth of Massachusetts and acceptable to the Town of Northbridge.

The Town of Northbridge and Turning Point Engineering are each to be named as an "Additional Insured" on all policies:

11. 1.3 At the end of this subparagraph, insert the following: "Neither the Owner's authority to review certificates and policies of insurance, nor their decision to raise or not raise any objections about those certificates and policies, shall in any way give rise to any duty or responsibility on the part of the Owner to exercise this authority for the benefit of the Contractor, any Subcontractor or Supplier, or any other party."

11. 1. 4 Add the following:

The Contractor's liability insurance shall remain in effect until the end of the Correction period as defined in Article 12 and in Division 1, General Requirements, and at all times after that when the Contractor may be correcting, removing, or replacing defective work. The Completed Operations insurance shall be maintained for two years after the final payment.

11. 3. 1 In the second sentence, after the words "loss or damage" insert a period and delete the words "including, without duplication of coverage, theft, vandalism and malicious mischief." Insert the following: "This coverage carries a deductible per occurrence which will be paid by the Contractor. This insurance coverage does not cover the Contractor's tools and equipment."

ARTICLE 12: UNCOVERING AND CORRECTION OF WORK

12.2.1 Add at the end of subparagraph 12.2.1:

"and any cost, loss, or damages to the Owner resulting from such failure or defect."

ARTICLE 13: MISCELLANEOUS PROVISIONS

13.4.4 add to the subsection 13.4.4 to read as follows:

The Contractor shall obtain and deliver promptly to the Owner's Project Manager any occupancy permit and any certificates of final inspection of any part of the Contractor's work and operating permits for any mechanical apparatus, such as elevators, escalators, boilers, air compressors, etc., which may be required by law to permit full use and occupancy of the premises by the Owner. Receipt of such permits or certificates by the Owner's Project Manager shall be a condition precedent to Substantial Completion of the Work.

13.6 Add subsection 13.6 to read as follows:

13.6 STATUTORY LIMITATION PERIOD

13.6.1 It is expressly agreed that the obligations of the Contractor hereunder arise out of contractual duties, and that the failure of the Contractor to comply with the requirements of the Contract Documents shall constitute a breach of contract, not a tort, for the purpose of applicable statutes of limitation and repose. Any cause of action which the Owner may have on account of such failure shall be deemed to accrue only when the Owner has obtained actual knowledge of such failure, not before.

ARTICLE 14: TERMINATION OF THE CONTRACT

14.1.1.4 Delete subparagraphs 14.1.1.4

14.2 Change Paragraph 14.2 to read as follows:

14.2 TERMINATION BY THE OWNER

If the Contractor is adjudged a bankrupt, or if the Contractor makes a general assignment for the benefit of the Contractor's creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if the Contractor fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction or disregards an instruction, order or decision of the Owner's Project Manager, or otherwise is guilty of a substantial violation of any provision of the Contract, then the Contractor shall be in default, and the Owner may, without prejudice to any other right or remedy and upon written notice to the Contractor, take possession of all materials, tools, appliances, equipment, construction equipment and machinery and vehicles, offices and other facilities on the Project site, and all materials intended for the Work, wherever stored, and, seven (7) days after such notice, may terminate the employment of the Contractor, accept assignment of any or

all subcontracts pursuant to Paragraph 5.4, and finish the Work by whatever method the Owner may deem expedient. The Owner shall be entitled to collect from the Contractor all direct, indirect, and consequential damages suffered by the Owner on account of the Contractor's default, including without limitation additional services and expenses of the Owner's Project Manager made necessary thereby. The Owner shall be entitled to hold all amounts due the Contractor at the date of termination until all of the Owner's damages have been established, and to apply such amounts to such damages.

14.3.1 Delete Paragraph 14.3.1.

15.1.5 Change subparagraph 15.1.5 to read as follows:

15.1.5 If the Contractor claims that any acts or discrepancies of the Owner or the Owner's Project Manager, including any instructions or orders, whether oral, written, by Drawings, or otherwise, involve extra cost or time, and the Contractor has not received a written acknowledgment by the Owner or Owner's Project Manager that extra payment will be made or time extended on account thereof, the Contractor shall promptly so notify the Owner's Project Manager in writing of such Claim and shall not proceed with the Work relating to such Claim until the Contractor has received a further written order to proceed in accordance with Contract except, as provided in the case of an emergency affecting life or property. No Claim by the Contractor on account of such acts, discrepancies, instructions or orders shall be valid unless the Contractor has so notified the Owner's Project Manager in writing, before proceeding, and has received the further written order to proceed.

15.1.6.1 Delete the second sentence of subparagraph 15.1.6.1 and substitute the following:

The Contractor shall have the burden of demonstrating the effect of the claimed delay on the Contract Time by confirming they have prepared and provided detailed construction schedule(s) in conformance with critical path schedules as required by contract documents, defining any and all schedule shift due to mismanagement of subcontractors, submittals, project management or other acts by the contractor, and shall furnish the Owner's Project Manager with any and all such documentation relating thereto as the Owner's Project Manager may require. If documentation is not sufficient, in the opinion of the Owner's Project Manager, the claim shall be denied.

15.1.8 Add subparagraph 15.1.8 to read as follows:

15.1.8 \*(Statutory reference: M.G.L. C.30 §39N)

If, during the progress of the work, the Contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the Contract Documents, either the Contractor or the awarding authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a Contractor, or upon its own initiative, the awarding authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the Contract Documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and Contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the awarding authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.

15.2.1.1 Add new subsection 15.2.1.1 with the following:

#### 15.2.1.1 REVIEW OF CLAIMS BY OWNER'S PROJECT MANAGER

The Owner's Project Manager shall review Claims and may (1) defer any action with respect to all or any part of a Claim and request additional information from either party; (2) decline to render a decision for any reason which he deems appropriate (including but not limited to the fact that the Claim involves the Owner's Project Manager);

or (3) render a decision on all or a part of the Claim. The Owner's Project Manager shall notify the parties in writing of his disposition of such Claim.

If the Owner's Project Manager decides that the Work relating to such Claim should proceed regardless of his disposition of such Claim, the Owner's Project Manager shall issue to the Contractor a written order to proceed. The Contractor shall proceed as instructed, and all rights of both parties with respect to such Claim shall be deemed to have been reserved.

15.3.3 Add to the last sentence of subparagraph 15.3.3 to read as follows:

Any change or addition to a previously made Claim shall be made by timely written notice in accordance with this subparagraph 15.3.3.

15.2.9 Insert new subparagraphs 15.2.9 as follows:

The Contractor, and any Subcontractor, Supplier and any other person or organization performing any part of Work, agree that each of them will waive jurisdiction and venue and shall submit to the jurisdiction of the courts of the Commonwealth of Massachusetts regardless of residence or domicile, with respect to any actions or suits at law or in equity arising under or related to the bidding, award or performance of the Work.

The Contractor, Subcontractors, Suppliers or any other person or organization shall not commence any action, other than those in the Commonwealth of Massachusetts in the county where the Owner's headquarters are located, against the Owner and the Owner's Project Manager, or any of their consultants, and/or any of their respective directors, officers, employees, representatives or agents, with regard to any matter whatsoever arising out of or relating to the validity, construction, interpretation or reinforcement of the Contract.

15.4 Delete paragraph 15.4 in its entirety.

15.5 Add new Paragraph 15.5 as follows:

#### DECISIONS BY AWARDING AUTHORITY OR OWNER'S PROJECT MANAGER

##### 15.5.1\* (Statutory Reference: M.G.L. c.30 §36P)

In every case in which this contract requires the awarding authority, any official, its Owner's Project Manager or Engineer to make a decision on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, the decision shall be made promptly and, in any event, no later than thirty days after the written submission for decision; but if such decision requires extended investigation and study, the awarding authority, the official, Owner's Project Manager or Engineer shall, within thirty days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty-day period and the date by which the decision will be made.

##### 15.5.2\* (Statutory reference: M.G.L. c.30 §39J)

Notwithstanding any contrary provision of this contract, no decision by the awarding authority or by the Owner's Project Manager on a dispute, whether of fact or of law, arising under said contract shall be final or conclusive if such decision is made in bad faith, fraudulently, capriciously, or arbitrarily, is unsupported by substantial evidence, or is based upon error of law.

#### ARTICLE 16\* - CONTRACTOR'S ACCOUNTING METHOD REQUIREMENTS (Statutory reference: M.G.L. c.30, §39R)

16.1\*-

16.5\* Add new paragraphs 16.1 through 16.5, as follows:

16.1\* The words defined herein shall have the meaning stated below whenever they appear in this Article 16:

16.1.1\* "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a contract pursuant to §39M of c.30, §§44A-44H inclusive, of c.149, and §§30B-30P, inclusive, of c.7.

16.1.2\* "Contract" means any contract awarded or executed pursuant to §§30B-30P, inclusive of c.7, and any contract awarded or executed pursuant to §39M of c.30, or §§44A-44H, inclusive, of c.149, which is for an amount or estimated amount that exceeds the dollar amount set forth in M.G.L. c.30, §39R.

16.1.3\* "Records" means books of original entry, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

16.1.4\* "Independent Certified Public Accountant" means a person duly registered in good standing and entitled to practice as a certified public account under the laws of the place of his/her residence or principal office and who is in fact independent. In determining whether an accountant is independent with respect to a particular person, appropriate consideration should be given to all relationships between the accountant and that person or any affiliate thereof. Determination of an accountant's independence shall not be confined to the relationships existing in connection with the filing of reports with the awarding authority.

16.1.5\* "Audit," when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards for the purpose of expressing a CERTIFIED opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons.

16.1.6\* "Accountant's Report," when used in regard to financial statements, means a document in which an independent certified public accountant indicates the scope of the audit which s/he has made and sets forth his/her opinion regarding the financial statements taken as a whole with a listing of noted exceptions and qualifications, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed the reason therefor shall be stated. An accountant's report shall include as a part thereof a signed statement by the responsible corporate officer attesting that management has fully disclosed all material facts to the independent certified public accountant, and that the audited financial statement is a true and complete statement of the financial condition of the Contractor.

16.1.7\* "Management," when used herein, means the chief executive officers, partners, principals, or other person or persons primarily responsible for the financial and operational policies and practices of the Contractor.

16.1.8\* Accounting terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principles and auditing standards.

16.2\* Subparagraph 16.1.2 hereof notwithstanding, every agreement or contract awarded or executed pursuant to §§30B-30P, inclusive of c.7, and pursuant to §39M of c.30 or to §§44A-44H, inclusive, of c.149, shall provide that:

16.2.1\* The Contractor shall make, and keep for at least six years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Contractor.

16.2.2\* Until the expiration of six years after final payment, the awarding authority, office of inspector general, and the deputy commissioner of capital planning and operations shall have the right to examine any books, documents, papers or records of the Contractor or of his/her Subcontractors that directly pertain to, and involve transactions relating to, the Contractor or his/her Subcontractors.

16.2.3\* If the agreement is a contract as defined herein, the Contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the awarding authority, including in his/her description the date of the change and reasons therefor, and shall accompany said description with a

letter from the Contractor's independent certified public accountant approving or otherwise commenting on the changes.

16.2.4\* If the agreement is a contract as defined herein, the Contractor has filed a statement of management on internal accounting controls as set forth in Paragraph 15.3 below prior to the execution of the contract.

16.2.5\* If the agreement is a contract as defined herein, the Contractor has filed prior to the execution of the contracts and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in Paragraph 15.5 below.

16.3\* Every Contractor awarded a contract shall file with the awarding authority a statement of management as to whether the system of internal accounting controls of the Contractor and its subsidiaries reasonably assures that:

16.3.1\* transactions are executed in accordance with management's general and specific authorization;

16.3.2\* transactions are recorded as necessary:

(i) to permit preparation of financial statements in conformity with generally accepted accounting principles, and

(ii) to maintain accountability for assets;

16.3.3\* access to assets is permitted only in accordance with management's general or specific authorization; and

16.3.4\* the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.

16.4\* Every Contractor awarded a contract shall also file with the awarding authority a statement prepared and signed by an independent certified public accountant, stating that s/he has examined the statement of management on internal accounting controls, and expressing an opinion as to

16.4.1\* whether the representations of management in response to this paragraph and Paragraph 16.2 above are consistent with the result of management's evaluation of the system of internal accounting controls; and

16.4.2\* whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statements.

16.5\* Every Contractor awarded a contract by the Commonwealth or by any political subdivision thereof shall annually file with the Deputy Commissioner of Planning and Operations during the term of the contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report.

ARTICLE 17:\* - EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION (Statutory reference: M.G.L. c.151B; Executive Orders No. 74, No. 116, and No. 246)

The provisions of this Article 17 are intended to comply with the Commonwealth's Supplemental Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program, referred to in Executive Order No. 116 and administered by the Massachusetts Commission Against Discrimination. If no specific percentage has been inserted in Subparagraph 17.2.3 below, the applicable minimum percentage provided for in such Supplemental Program shall be deemed to have been so inserted.

17.1\* Definitions. For purposes of this contract, "minority" refers to Asian-Americans, Blacks, Spanish Surnamed Americans, North American Indians, and Cape Verdeans. "Commission" refers to the Massachusetts Commission Against Discrimination.



17.2\* Non-Discrimination and Affirmative Action Requirements. During the performance of his contract, the Contractor and all of (his) Subcontractors (hereinafter collectively referred to as the Contractor), for himself, his assignees, and successors in interest, agree as follows:

17.2.1\* In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age or sex. The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment advertising; recruitment layoff; termination; rates of pay or other forms of compensation; conditions or privileges of employment; and selection for apprenticeship. The Contractor shall post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Commission setting forth the provisions of the Fair Employment Practices Law of the Commonwealth.

17.2.2\* In connection with the performance of work under this contract, the Contractor shall undertake in good faith affirmative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age or sex, and to eliminate and remedy any effects of such discrimination in the past. Such affirmative action shall entail positive and aggressive measures to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, and in-service or apprenticeship training programs. This affirmative action shall include all action required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, age, or sex. A purpose of this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for this and future Commonwealth public construction projects.

17.2.3\* As part of his obligation of remedial action under the foregoing Subparagraph

17.2.2, the Contractor shall maintain on this project a not less than 5 percent ratio of minority employee man hours to total man hours in each job category including but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those "classes of work" enumerated in M.G.L. c.149, §44F.

17.2.4\* In the hiring of minority journeymen, apprentices, trainees and advanced trainees, the Contractor shall rely on referrals from a multi-employer affirmative action program approved by the Commission, traditional referral methods utilized by the construction industry, and referrals from agencies, not more than three in number at any one time, designated by the Liaison Committee (described in Subparagraph 17.2.5 below) or the Commission.

17.2.5\* At the discretion of the Commission there may be established for the life of this contract a body to be known as the Liaison Committee. The Liaison Committee shall be composed of one representative each from the agency or agencies administering this project, hereinafter called the administering agency, the Commission and such other representatives as may be designated by the Commission in conjunction with the administering agency.

17.2.6\* The Contractor (or his agent, if any, designated by him as the on-site equal employment opportunity officer) shall recognize the Liaison Committee as an affirmative action body, and shall establish a continuing working relationship with the Liaison Committee, consulting with the Liaison Committee on all matters related to minority recruitment, referral, employment and training.

17.2.7\* The Contractor shall prepare projected manning tables on a quarterly basis. These shall be broken down into projections, by week, of workers required in each trade. Copies shall be furnished one week in advance of the commencement of the period covered, and also when updated, to the Commission and Liaison Committee.

17.2.8\* Records of employment referral orders, prepared by the Contractor, shall be made available to the Commission and to the Liaison Committee on request.

17.2.9\* The Contractor shall prepare weekly reports in a form approved by the Commission of hours worked in each trade by each employee, identified as minority or non-

minority. Copies of these shall be provided at the end of each such week to the Commission and to the Liaison Committee.

If the Contractor shall use any subcontractor on any work performed under this contract, he shall take affirmative action to negotiate with qualified minority subcontractors. This affirmative action shall cover both pre-bid and post-bid periods. It shall include notification to the Office of Minority Business Assistance (within the Executive Office of Communities and Development) or its designee, while bids are in preparation, of all products, work or services for which the Contractor intends to negotiate bids.

In the employment of journeymen, apprentices, trainees and advanced trainees, the Contractor shall give preference, first, to citizens of the Commonwealth who have served in the armed forces of the United States in time of war and have been honorably discharged therefrom or released from active duty therein, and who are qualified to perform the work to which the employment relates, and, secondly, to citizens of the Commonwealth generally, and, if such cannot be obtained in sufficient numbers, then to citizens of the United States.

A designee of the Commission and a designee of the Liaison Committee shall each have right of access to the construction site.

17.3\* Compliance with Requirements. The Contractor shall comply with the provisions of Executive Order No. 74, as amended by Executive Order No. 166, dated May 1, 1975, and of M.G.L. c.151B, both of which are herein incorporated by reference and made a part of this contract.

17.4\* Non-Discrimination. The Contractor, in the performance of all work after award, and prior to completion of the contract work, will not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of Subcontractors, or in the procurement of materials and rentals of equipment.

17.5\* Solicitations for Sub-Contracts, and for the Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential Subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this contract relative to non-discrimination and affirmative action.

17.6\* Bidders' Certification Requirement. The Contractor hereby certifies he shall comply with the minority manpower ratio and specific action steps contained herein. The Contractor shall be required to obtain for each of its subcontractors and submit to the contracting or administering agency prior to the performance of any work under the contract a certification by said Subcontractor, regardless of tier, that it will comply with the minority manpower ratio and specific affirmative action steps contained herein. Such certification shall be provided on forms furnished by the awarding authority or, in the absence thereof, on forms prescribed by the Commission.

17.7\* Contractor's Certification. The Contractor's certification form must be signed by all successful low bidder(s) prior to award by the contracting agency.

17.8\* Compliance-Information, Reports and Sanctions.

17.8.1\* The Contractor will provide all information and reports required by the Owner's Project Manager, the administering agency or the Commission on instructions issued by either of them and will permit access to its facilities and any books, records, accounts and other sources of information which may be determined by the Commission to affect the employment of personnel. This provision shall apply only to information pertinent to the Commonwealth's supplementary affirmative action contract requirements. Where information required is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the administering agency or the Commission as appropriate and shall set forth what efforts he has made to obtain the information.

17.8.2\* Whenever the administering agency, the Owner's Project Manager, the Commission, or the Liaison Committee believes the Contractor or any Subcontractor may not be operating in compliance with the terms of this Paragraph 16.8, the commission directly, or through its designated agent, shall conduct an appropriate investigation, and may confer with the parties, to determine if such Contractor is operating in compliance with the terms of

this Paragraph 16.8. If the Owner's Project Manager, the Commission or its agent finds the Contractor or any Subcontractor not in compliance, it shall make a preliminary report on non-compliance, and notify such Contractor in writing of such steps as will in the judgment of the Commission or its agent bring such Contractor into compliance. In the event that such Contractor fails or refuses to fully perform such steps, the Commission shall make a final report of non-compliance, and recommend to the administering agency the imposition of one or more of the sanctions listed below. If, however, the Commission believes the Contractor or any Subcontractor has taken or is taking every possible measure to achieve compliance, it shall not make a final report of non-compliance. Within fourteen days of the receipt of the recommendations of the Commission, the administering agency shall move to impose one or more of the following sanctions, as it may deem appropriate to attain full and effective enforcement:

(i) The recovery by the administering agency from the Contractor of 1/100 of 1% of the contract award price or \$1,500, whichever sum is greater, in the nature of liquidated damages or, if a Subcontractor is in non-compliance, the recovery by the administering agency from the Contractor, to be assessed by the Contractor as a back charge against the Subcontractor, of 1/10 of 1% of the subcontract price, or \$1,500, whichever sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply;

(ii) The suspension of any payment or part thereof due under the contract until such time as the Contractor or any Subcontractor is able to demonstrate his compliance with the terms of the contract;

(iii) The termination, or cancellation, of the contract, in whole or in part, unless the Contractor or any Subcontractor is able to demonstrate within a specified time his compliance with the terms of the contract;

(iv) The denial to the Contractor or any Subcontractor of the right to participate in any future contracts awarded by the administering agency for a period of up to three years.

If at any time after the imposition of one or more of the above sanctions a Contractor is able to demonstrate that he is in compliance with this Paragraph 17.8, he may request that administering agency, in consultation with the Commission, to suspend the sanctions conditionally, pending a final determination by the Commission as to whether the Contractor is in compliance. Upon final determination of the Commission, the administering agency, based on the recommendation of the Commission, shall either lift the sanctions or reimpose them.

Sanctions enumerated under Subparagraph 17.8.2 of this Paragraph 16.8 shall not be imposed by the administering agency except after an adjudicatory proceeding, as that term is used in M.G.L. c.30A, has been conducted. No investigation by the Commission or its agent shall be initiated without prior notice to the Contractor.

17.9\* Severability. The provisions of this Article 17 are severable, and if any of these provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

17.10\* Equal Employment Opportunity for the Handicapped. The Contractor shall comply with the provisions of Executive Order No. 246, relating to discrimination against and equal employment opportunity for the handicapped, which is herein incorporated by reference and made a part of this contract. In connection with the performance of work under this contract, the Contractor, Subcontractors and suppliers of goods and services shall not discriminate against the handicapped. Furthermore, Contractors, Subcontractors and suppliers of good and services must give written notice of their commitments under this Paragraph 17.10 to any labor union, association or brotherhood with which they have a collective bargaining contract or other agreement, and must give such notice to handicap contractors and to handicapped contractor associations. A copy of such notice must be furnished to the awarding authority at the time of the signing of the contract.

17.11\* Suspension of Payments.

17.11.1\* If the awarding authority determines after investigation that the Contractor or any Subcontractor is not in compliance with the terms of Article 17, it may suspend any payment or portion thereof due under the contract until Contractor demonstrates compliance with the terms of Article 17.

17.11.2\* Payment shall not be suspended if the awarding authority finds that the Contractor made his best efforts to comply with Article 17, or that some other justifiable reason exists for waiving the provisions of Article 17 in whole or in part.

17.11.3\* Payment may be suspended only after the Contractor and any other interested party shall have been given the opportunity to present evidence in support of its position at an informal hearing held by the awarding authority and the awarding authority has concluded upon review of all the evidence that such penalty is justified.

17.11.4\* This temporary suspension of payments by the awarding authority is separate from the sanctions set forth in Paragraph 17.8 above, which are determined by the Commission and recommended to the awarding authority.

END OF DOCUMENT

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SUPPLEMENTARY CONDITIONS

Amending the General Conditions of the Contract for Construction  
AIA Document A201 (2017 edition)

I. SUPPLEMENTARY CONDITIONS

The following addendum supplements, modifies, deletes and/or adds to the General Conditions. Where any Article, Paragraph or subparagraph in the General Conditions is supplemented by one of the following paragraphs, the provisions of such Article, Paragraph, or Subparagraph shall remain in effect and the supplemental provisions shall be considered as added thereto. Where any Article, Paragraph, or subparagraph in the General Conditions is amended, voided or superseded by any of the following paragraphs, the provisions of such Article, Paragraph or subparagraph not so amended, voided, or superseded shall remain in effect.

II. MODIFICATIONS TO VARIOUS ARTICLES OF THE AIA CONDITIONS

ARTICLE 1 GENERAL PROVISIONS

- 1.1.1 In the first sentence, delete “are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and” after “The Contract Documents”.

Insert “between the Owner and Contractor (hereinafter the Agreement)” after “consist of the Agreement”.

In the last sentence:

Delete “Unless specifically enumerated in the Agreement”.

Delete “not” after “Contract Documents do”.

Delete “other” after “sample forms,”.

Delete “or” after “or proposal,” and insert “and”.

Delete “bidding or proposal requirements” after “relating to” and insert “those documents.”

- 1.1.8 Delete “Claims” and insert “claims”.

Delete “and shall not be liable for results of interpretations or decision rendered in good faith.”.

1.2.1.2 Add to the end of the sub-section:

All Work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this Contract unless it is specifically indicated in the Contract Documents that such Work is to be done by others. Should the Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or greater quantity of Work unless otherwise directed by written addendum to the Contract.

1.2.1 Add to the end of the sentence:

, except that the performance of filed sub-trade work shall comply with the provisions of chapter 149 of the General Laws of the Commonwealth of Massachusetts. The Contractor and all Subcontractors shall refer to all of the Drawings, including those showing primarily the Work of the mechanical, electrical and other specialized trades, and to all of the Sections of the Specifications, and shall perform all Work reasonably inferable therefrom as being necessary to produce the indicated results.

1.2.4 Add the following new sub-sections 1.2.4 to 1.2.11 as follows:

-1.2.11

§ 1.2.4 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

§ 1.2.5 Where codes, standards, requirements and publications of public and private bodies are referred to in the Specifications, references shall be understood to be to the latest revision prior to the date of receiving bids, except where otherwise indicated.

§ 1.2.6 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with the quality of the surrounding Work and of the construction of the Project generally.

§ 1.2.7 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

§ 1.2.8 The Mechanical, Electrical and Fire Protection Drawings are diagrammatic only, and are not intended to show the alignment, physical locations or configurations of such Work. Such Work shall be installed without additional cost to the Owner to clear all obstructions, permit proper clearances for the Work of other trades, and present an orderly appearance where exposed. Prior to beginning such Work, the Contractor shall prepare coordination drawings showing the exact alignment, physical location and configuration of the Mechanical, Electrical and Fire Protection installations and demonstrating to the Contractor's satisfaction that the installations will comply with the preceding sentence. A copy of the drawings shall be submitted to the Owner's Project Manager, and the Contractor shall revise and resubmit the drawings if so directed by the Owner's Project Manager.

§ 1.2.9 Exact locations of fixtures and outlets shall be obtained from the Owner's Project Manager as provided in subparagraph 3.2.5 before the Work is roughed in; Work installed without such information from the Owner's Project Manager shall be relocated at the Contractor's expense.

§ 1.2.10 Test boring or soil test information included with the Contract Documents or otherwise made available to the Contractor was obtained by the Owner for use by the Owner's Project Managers in the design of the Project or Work. The Owner does not hold out such information to the Contractor as a completely accurate indication of subsurface conditions, and no claim for extra cost or extension of time resulting from a reliance by the Contractor on such information shall be allowed except as provided in subparagraph 3.7.4.

§ 1.2.11 Where the Work is to fit with existing conditions or work to be performed by others, the Contractor shall fully and completely join the Work with such conditions or work, unless otherwise specified. Owner provided drawings showing existing conditions or construction are based on available documents and are not guaranteed to show actual existing conditions.

1.5.1 Delete 1.5.1 and replace as follows:

§ 1.5.1 All Drawings, Specifications and copies thereof furnished by the Owner are and shall remain the Owner's property. They are to be used only with respect to this Project and are not to be used on any other project without the prior written consent of the Owner. With the exception of one contract set for each party to the Contract, such documents are to be returned or suitably accounted for to the Owner at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of any reserved rights.

- 1.8 Delete “using or relying party’s” in Section 1.8 and replace with “Contractor’s”

## ARTICLE 2 OWNER

- 2.1.2 Delete sub-section 2.1.2.

- 2.2.1 - Delete subsections 2.2.1 through 2.2.4  
2.2.4

- 2.3.5 Delete the last sentence.

- 2.3.6 Add to the end of the sub-section as follows:

All additional copies will be furnished upon request at the cost of reproduction.

- 2.4 Delete from the last sentence “, except to the extent required by Section 6.1.3” and add as follows:

The Contractor shall resume the Work after such stoppage promptly upon written notice to do so from the Owner. The Contractor shall remain responsible for maintaining the progress of the Work and shall not be entitled to any increase in the Contract Sum or Contract Time. The Contractor shall be responsible for all costs incurred by the Owner attributable to such an order to stop the Work.

- 2.5 Add to the end of the section as follows:

The rights of the Owner hereunder are in addition to any other rights set forth in the Contract Documents or available at law or in equity.

## ARTICLE 3 CONTRACTOR

- 3.2.1 Delete “generally” after “the site, become”.

Add to the end of the sub-section as follows:

The Contractor shall not be entitled to any change in the Contract Time or Contract Sum on account of its failure, or that of any Subcontractor, to comply with the foregoing requirements.

- 3.2.2 Delete the beginning of the second sentence as follows:



These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however,

Delete the last sentence and replace as follows:

If the Contractor performs any construction activity that it knows or should know involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Owner's Project Manager, the Contractor shall assume appropriate responsibility for such performance and shall bear responsibility for the costs of any required correction.

3.2.3 Delete "not" after "Contractor is".

Delete ", but" after "public authorities" and create new sentence beginning with "The Contractor shall promptly".

3.2.4 Delete "claims" after "the Contractor shall submit" and insert "a claim".

Delete the last sentence.

3.2.5 Add new sub-section 3.2.5 as follows:

§ 3.2.5 Any claim by the Contractor or Subcontractors that, in submitting their respective bids, they did not include all items as shown in the Contract Documents will be given no consideration for an adjustment of any kind. If any item is specified in a Section which would not normally furnish this item it shall be the responsibility of the Contractor to coordinate the situation with the Subcontractor, and if the item under consideration is not to be provided by the Subcontractor it shall be the responsibility of the Contractor to provide the work in question, without any additional cost to the Owner.

3.3.1 Add to the end of the first sentence as follows:

which shall not be less than such state of skill and attention generally rendered by the contracting profession for projects similar to the Project in scope, difficulty and location. The Contractor shall adequately staff the Project to properly and thoroughly manage, schedule and supervise all construction activities.

3.3.2 Add the last sentence as follows:

This obligation shall also extend to the presence on the Site of suppliers of materials or equipment, their employees, contractors, and agents engaged in the Work.

3.4.3 Add to the end of the second sentence as follows:

, and the Contractor shall ensure that all workers to be employed on the Project have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration (OSHA) of at least 10 hours. The Contractor shall be responsible for maintaining all safety precautions at and around the Project site. On the Owner's request, the Contractor shall permanently remove from the Project site any employee of the Contractor or any Subcontractor who fails to comply with the requirements of the Contract Documents or whose presence or behavior is deemed by the Owner to be adverse to the success of the Project or the Owner's interests.

3.5 Add to the end of the first sentence as follows:

and, promptly after written notification of non-conformance, shall be repaired or replaced by the Contractor with Work conforming to such requirements.

Delete the second to last sentence.

3.5.3 Add new sub-sections 3.5.3 to 3.5.9 as follows:

-3.5.9

§ 3.5.3 The Contractor shall be responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. The Owner's Project Manager may require the Contractor to produce reasonable evidence that a material meets such requirements, such as certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of the Owner's Project Manager, would lead to a reasonable certainty that any material used, or proposed to be used, in the Work meets the requirements of the Contract Documents. All such data shall be furnished at the Contractor's expense. This provision shall not require the Contractor to pay for periodic testing of different batches of the same material, unless such testing is specifically required by the Contract Documents to be performed at the Contractor's expense.

§ 3.5.4 If the Contractor proposes to use a material which, while suitable for the intended use, deviates in any way from the detailed requirements of the Contract Documents, the Contractor shall inform the Owner's Project Manager in writing of the nature of such deviations at the time the material is submitted for approval and request approval of the deviation. The Owner's Project Manager shall judge the design and appearance of proposed substitutes, and may refuse to approve any substitute which, in the Owner's Project Manager's opinion,

would be out of character or otherwise inconsistent with the character or quality of design of the Project.

§ 3.5.5 In informing the Owner's Project Manager of deviations or substitutions, the Contractor shall provide, upon request, evidence leading to a reasonable certainty that the proposed substitution or deviation will provide a quality of result at least equal to that otherwise attainable in accordance with the Contract Documents. If, in the opinion of the Owner's Project Manager, the evidence presented by the Contractor does not provide a sufficient basis for such reasonable certainty, the Owner's Project Manager may reject such substitution or deviation without further investigation.

§ 3.5.6 Any additional cost, or any loss or damage arising from the substitution of any material or any method for those originally specified shall be borne by the Contractor, notwithstanding approval or acceptance of such substitution by the Owner or the Owner's Project Manager, unless such substitution was made at the written request or direction of the Owner or the Owner's Project Manager.

§ 3.5.7 The warranty provided in this paragraph 3.5 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

§ 3.5.8 The Contractor shall procure and deliver to the Owner's Project Manager, no later than the date claimed by the Contractor as the date of Substantial Completion, all special warranties required by the Contract Documents. Delivery by the Contractor shall constitute the Contractor's guarantee to the Owner that the warranty will be performed in accordance with its terms and conditions.

§3.5.9 The Contractor shall guarantee all Work for a period of one year after Date of Substantial Completion, or by the terms of any special guarantee required by the Contract Documents. The Contractor shall, upon written notice from the Owner, promptly correct defective Work or Work not in accordance with the Contract Documents.

3.6.1 Add new sub-section 3.6.1 as follows:

§ 3.6.1 The project is exempt from the Massachusetts Sales Tax to the extent permitted by G.L. c.64H, §6(f). The exemption number will be provided by the Awarding Authority to the Contractor.

3.7.2 Add to the end of the sub-section as follows:

If any of the Work is required to be inspected or approved by any public authority, the Contractor shall cause such inspection or approval to be

performed and shall comply with any instructions or corrections ordered by the public authority.

3.7.3 Delete “knowing it” after “performs Work” and replace with “it knows or should know”.

3.7.4 Delete sub-section 3.7.4 and replace as follows:

§ 3.7.4 Concealed or Unknown Conditions. Claims for concealed or unknown conditions shall be governed by Chapter 30, Section 39N of the General Laws of the Commonwealth of Massachusetts, as amended.

3.7.5 Delete second and last sentences.

3.8 Delete section 3.8 in its entirety.

3.9.1 In the first sentence:

Insert “, in accordance with the Contract Documents,” after “shall employ”.

Insert “at all times” after “the Project site”.

3.9.4 Add new sub-sections 3.9.4 and 3.9.5 as follows:

-3.9.5

§ 3.9.4 The Contractor shall coordinate and supervise the Work performed by Subcontractors to the end that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. The Contractor and all Subcontractors shall at all times afford each trade, any separate contractor, or the Owner, every reasonable opportunity for the installation of Work and the storage of materials.

§ 3.9.5 The Contractor shall arrange for and attend job meetings with the Owner’s Project Manager and such other persons as the Owner’s Project Manager may from time to time wish to have present. The Contractor shall be represented by a principal, project manager, general superintendent or other authorized main office representative, as well as by the Contractor's own superintendent. An authorized representative of any Subcontractor or Sub-subcontractor shall attend such meetings if the representative's presence is requested by the Owner’s Project Manager. Such representatives shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, change orders, time schedules and manpower. Any notices required under the Contract may be served on such representatives.

- 3.10.1 In the first sentence delete “promptly” after “The Contractor” and replace with “within twenty (20) days”.

In the second sentence, insert “or as requested by the Owner’s Project Manager” after “conditions of the Work and Project”.

Add to the end of the sub-section as follows:

The construction schedule shall be in such form and contain such information as the Owner’s Project Manager and Owner require. The construction schedule shall be resource loaded for the Contractor and all subcontractors, with each resource identified by name, description, unit of measure, and calendar assignment. For each class of work included in the Contractor’s schedule of values, the construction schedule shall show the percentage of completion to be obtained and the total dollar value of the work to be completed as of the first of each month until Substantial Completion. All calculations shall be on the basis of work in place, but not including the value of materials delivered but not in place.

- 3.10.3 Add to the end of the sub-section as follows:

The Contractor’s compliance with the construction schedule is a material obligation of the Contract.

- 3.10.4 Add new sub-sections 3.10.4, 3.10.5, and 3.10.6 as follows:

-3.10.6

§ 3.10.4 The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The construction schedule shall be updated every month (or more frequently if requested by the Owner) to reflect actual conditions (such updates are sometimes referred to in these General Conditions as "progress reports"). In the event any progress report indicates delays in achievement of any milestone date set forth in such schedule, the Contractor shall propose in written form an affirmative plan (the "Recovery Schedule") to correct the delay, including overtime and/or additional labor, if necessary, which Recovery Schedule shall indicate the date by which the progress of the Work will comply with the construction schedule, and shall be subject to the approval of the Owner and the Owner’s Project Manager. In no event shall any progress report or Recovery Schedule constitute an adjustment in the construction schedule, Contract Time or any milestone date unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.

§ 3.10.5 In the event (i) that the performance of the Work, as of a milestone date, has not progressed or reached the level of completion required by the construction schedule, and (ii) the progress of the Work is not brought back into compliance with the construction schedule on the date proposed by the Recovery Schedule, or the Contractor otherwise fails to comply with the Recovery Schedule, the Owner shall have the right to order the Contractor to take corrective measures to expedite the progress of the Work, including, without limitation, (1) supplying additional manpower, equipment, and facilities, (2) working additional shifts or overtime, (3) working additional days, and (4) other similar measures (hereinafter referred to collectively as "Corrective Measures"). Such Corrective Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents.

§ 3.10.6 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Corrective Measures required by the Owner under or pursuant to Section 3.10.5. The Owner may exercise the rights furnished the Owner under or pursuant to Section 3.10.5 as frequently as reasonably necessary to ensure that the Contractor's performance of the Work complies with the milestone dates set forth in the construction schedule.

3.12.6 Add to the end of the sub-section as follows:

By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals the Contractor thereby represents that the Contractor has determined and verified all dimensions, quantities, field dimensions, relations to existing work, coordination with work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data, Samples, or similar submittals and verification of compliance with all the requirements of the Contract Documents. The accuracy of all such information is the responsibility of the Contractor. In reviewing Shop Drawings, Product Data, Samples, and similar submittals the Owner's Project Manager shall be entitled to rely upon the Contractor's representation that such information is correct and accurate and is held indemnified by the contractor against all claims and disputes of any kind.

3.12.10 Add to the end of the last sentence as follows:

, except as provided in Section 3.2.

3.12.10.2 Add to the end of subsection 3.12.10.2 the following:

When professional certification of materials, systems or equipment is required by the Contract Documents, the Owner shall be entitled to rely upon such certifications, and neither the Owner nor the Owner's Project

Manager shall be expected to make an independent examination with respect to the performance of such materials, systems or equipment.

3.13 Add to the end of the section as follows:

The right of possession of the premises and the improvements made thereon by the Contractor shall remain at all times with the Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Owner shall not be liable to the Contractor, the Subcontractors, their employees, or anyone else with respect to the conditions of the premises, except only for a condition caused directly and solely by the negligence of the Owner.

3.15.1 Add “site” to the end of the second sentence.

3.15.2 Add to the end of the sentence as follows:

, and may deduct all costs thereof from any payment due the Contractor.

3.16 Insert “, Owner’s representatives” after “provide the Owner”.

3.18.1 Delete the first sentence and replace as follows:

To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Owner’s Project Manager, Owner’s Project Manager’s consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work, including claims, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the Work, caused in whole or in part by the negligent or wrongful acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations, including those of indemnity, which would otherwise exist as to a party or person described in this section.

ARTICLE 4 OWNER’S PROJECT MANAGER

4.1.2 In the first sentence delete “, Contractor” after “consent of the Owner”.

In the second sentence insert “of the Owner” after “Consent”.

4.2.3 In the first sentence delete “reasonably” after “will keep the Owner”.

4.2.10 Delete sub-section 4.2.10.

4.2.11 Add to the end of the sub-section as follows:

The parties agree that the Owner’s Project Manager’s duties under this subparagraph shall be governed by Chapter 30, Section 39P of the General Laws of the Commonwealth of Massachusetts, as amended.

4.2.12 Delete the second sentence.

#### ARTICLE 5 SUBCONTRACTORS

5.2.1 Delete the last sentence.

5.2.2 In the second sentence insert “and legally permissible” after “has made reasonable”.

5.2.3 Delete the last two sentences and replace as follows:

No increase in the Contract Sum or Contract Time shall be allowed for such change.

5.2.4 Add to the end of the sub-section as follows:

The applicable provisions of Chapter 149, Section 44F of the General Laws of the Commonwealth of Massachusetts shall apply to filed sub-bid subcontractors.

5.4.1 In sub-heading .1 delete “Section 14.2” and replace with “Article 14”.

Add new sub-heading .3 as follows:

.3 The Owner may further assign the subcontract to a successor contractor or other entity.

Delete last sentence of sub-section.

5.4.2 Delete sub-sections 5.4.2 and 5.4.3.  
-5.4.3



## ARTICLE 6 CONSTRUCTION BY OWNER OR SEPARATE CONTRACTORS

6.1.1 At the end of the second sentence delete “including those provisions of the Conditions under the Contract related to insurance and waiver of subrogation”.

6.1.4 Delete sub-section 6.1.4 and replace as follows:

§ 6.1.4 The Owner reserves the right to enter any part of the Project site at any time to inspect the Work or to perform other work with its own forces or separate contractors, or to address any emergency situation. Such access is not to be construed to mean partial occupancy by the Owner and no claim for increase in the Contract Time or Sum will be considered unless such Owner’s contractors have delayed or damaged the Contractor’s Work. The Contractor shall permit the Owner to place and install as much furniture, equipment and other material during the progress of the Work as is possible before completion of the various parts of the Work and agrees that such placing and installation of equipment shall not in any way evidence the completion or acceptance of the Work or any portion of it.

6.2.2 Delete the last sentence.

6.2.3 Delete the last sentence.

6.2.5 Delete sub-section 6.2.5.

## ARTICLE 7 CHANGES IN THE WORK

7.2.2 Add new sub-section 7.2.2 as follows:

§ 7.2.2 Upon request of the Owner or the Owner’s Project Manager, the Contractor shall without cost to the Owner submit to the Owner’s Project Manager, in such form as the Owner’s Project Manager may require, an accurate written estimate of the cost of any proposed extra Work or change. The estimate shall indicate the quantity and unit cost of each item of material, and the number of hours of work and hourly rate for each class of labor, as well as a description and the amounts of all other costs chargeable under the terms of this Article. Unit labor costs for the installation of each item of material shall be shown if required by the Owner’s Project Manager. The Contractor shall promptly revise and resubmit each estimate if the Owner’s Project Manager determines that it is not in compliance with the requirements of this Article, or that it contains errors of fact or mathematical errors. If required by the Owner’s Project Manager, in order to establish the exact cost of new Work added or of previously required Work omitted, the Contractor shall obtain and furnish to the Owner’s Project Manager bona fide proposals from

recognized suppliers for furnishing any material included in such Work. Such estimates shall be furnished promptly so as to occasion no delay in the Work, and shall be furnished at the Contractor's expense. The Contractor shall state in the estimate any extension of time required for the completion of the Work if the change or extra work is ordered.

7.3.3 Delete the first sentence of the sub-section and replace as follows:

If the Construction Change Directive provides for an adjustment to the Contract Sum, and if the Contract Documents include a unit price for the work that is the subject of such directive, such unit price shall be the basis of the adjustment to the Contract Sum, unless the Owner, in its sole discretion, chooses another method. If, however, the Contract Documents do not include a unit price for such work, the adjustment shall be based on one of the following methods, as selected by the Owner:

In sub-heading .2 delete “stated in the Contract Documents or” after “Unit prices”.

7.3.4 Delete first sentence and replace as follows:

If the proposed method of adjustment in the Contract Sum is based on unit prices that are stated in the Contract Documents, such unit prices shall be the basis of any adjustment to the Contract Sum, unless the Owner has chosen another method pursuant to subparagraph 7.3.3. If the proposed method of adjustment is not based on such unit prices and the Contractor objects to the proposed method of adjustment, the Contractor must notify the Owner's Project Manager of such objection in writing within five (5) calendar days from Contractor's receipt of the Construction Change Directive. Failure to so object will irrevocably waive any such objections and claims on account of such method of adjustment, and the Construction Change Directive shall be deemed and shall constitute a Change Order. If the Contractor does so object, the adjustment to the Contract Sum shall be determined by the Owner's Project Manager on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit.

In sub-heading .4 insert “and” after “and insurance,” and delete “, and sales, use or similar taxes related to the Work” after “permit fees”.

Delete sub-heading .5 and replaces as follows:

.5 A reasonable allowance for overhead and profit.

7.3.6 In the first sentence add after “the Work involved and” as follows:

, within five (5) calendar days from receipt of the Construction Change

Directive,”

Insert “by written notice” after “advise the Owner’s Project Manager”. Add to the end of the sub-section as follows:

Failure to so advise the Owner’s Project Manager within such 5-day period (1) shall be interpreted as Contractor’s agreement with the proposed method of adjustment; (2) shall constitute an irrevocable waiver of any right of the Contractor to submit a claim on account of the method of adjustment; and (3) shall cause the Construction Change Directive to be deemed and constitute a Change Order.

7.3.7 In the second sentence delete “recorded as” after “immediately shall be” and replace with “deemed and shall constitute”.

7.3.9 Delete the end of the first sentence starting after “Directive to the Owner,” and replace as follows:

amounts for such changes in the Work shall not be included in Applications for Payment. Such amounts shall only be included in an Application for Payment after the adjustment for the Construction Change Directive has been included in a Change Order signed by the Owner and the Contractor.

## ARTICLE 8 TIME

8.2.2 In the first sentence delete “, except by agreement or instruction of the Owner”

8.2.4 Add new sub-sections 8.2.4 and 8.2.5 as follows:

-8.2.5

§ 8.2.4 Unless specifically required by law, no payment under this Contract shall be due until the construction schedule, required by Section 3.10, and conforming to the requirements of the General Requirements has been accepted by the Owner’s Project Manager.

§ 8.2.5 If the Owner’s Project Manager in reviewing any Application for Payment determines that the amount of completed Work in place as certified by the Owner’s Project Manager is less than 90% of the Work in place required by the Contractor’s construction schedule or schedule of values provided for in Section 9.2, or that there have been delays to critical paths and the Contract completion date will not be met, or that, in the Owner’s sole discretion, there is reasonable concern that the Work will not be Substantially Complete by the date required in the Contract Documents, the Contractor shall be required to submit a recovery schedule with a written description of the steps the Contractor intends to take to put the

Project back on schedule. At the Owner's option, the Contractor shall take some or all of the following actions at no additional cost to the Owner:

- .1 Increase the number of workers on the site, in such quantities and trades as will substantially eliminate the backlog of work;
- .2 Increase the number of working hours per shift, shifts per day, working days per week, amount of construction equipment, or any combination of the foregoing, sufficiently to substantially eliminate backlog of work; or
- .3 Reschedule activities so that the completion dates initially scheduled will be met.

8.3.1 Insert "(except weather)" after "casualties" and delete "adverse weather conditions documented in accordance with Section 15.1.6.2"

Delete "pending mediation and binding dispute resolution" after "delay authorized by Owner".

Add to the end of the sub-section as follows:

, and this shall be the Contractor's sole remedy for such delay. Under no circumstances will the Contractor be entitled to an increase in the Contract Sum, or to any other damages, on account of or in connection with any delay, regardless of the cause of such delay, and Contractor agrees not to make any claim for such damages, including, but not limited, claims for damages on account of having to perform out-of-sequence work, claims for damages on account of loss of production, and claims for damages on account of hindrances or interference with the work.

8.3.3 Delete sub-section 8.3.3.

8.3.4 Add new sections 8.3.4 and 8.3.5 as follows:

-8.3.5

§ 8.3.4 No extension of time shall be granted because of seasonal or abnormal variations in temperature, humidity or precipitation, which conditions shall be wholly at the risk of the Contractor, whether occurring within the time originally scheduled for completion or within the period of any extension granted. There shall be no increase in the Contract Sum on account of any additional costs of operations or conditions resulting therefrom.

§ 8.3.5 The Contractor hereby agrees that the Contractor shall have no claim for damages of any kind against the Owner or the Owner's Project Manager on account of any delay in the commencement of the Work and/or any hindrance, delay or suspension of any portion of the Work, whether such delay is caused by the Owner, the Owner's Project Manager, or otherwise, except as and to the extent expressly provided in G.L. c. 30, §39N. The Contractor acknowledges that the Contractor's sole

remedy for any such delay and/or suspension will be an extension of time as provided in this Article.

8.4 Add new section 8.4 as follows:

§ 8.4 LIQUIDATED DAMAGES

§ 8.4.1 It is expressly understood and agreed, by and between the Contractor and Owner, that the time for the completion of the Work described herein is a reasonable time for the completion of same, taking into consideration the average climatic range and usual industrial and/or residential conditions prevailing in this locality. If the said Contractor shall neglect, fail or refuse to complete the Work within the times herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner \$1,500.00, not as a penalty but as liquidated damages for such breach of contract, for each and every calendar day that the Contractor shall be in default after the time stipulated for completing the Work. The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be deducted by the Owner from periodic payments.

ARTICLE 9 Payments and Completion

9.1.2 Delete subsection 9.1.2 and replace with the following:

§9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that, in the opinion of the Owner's Project Manager, application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner, the applicable unit prices shall be equitably adjusted.

9.2 Add to the end of the section as follows:

, and shall be revised if later found by the Owner's Project Manager to be inaccurate. In addition, the Contractor shall submit to the Owner's Project Manager, at least 14 days before the first Application for Payment, a Cash Flow Schedule that shows the percentage completion to be obtained and the total dollar value of Work to be completed as of the first of each month until Substantial Completion. All calculations in the Cash Flow Schedule shall be on the basis of Work in place and shall exclude the value of materials delivered but not in place.

9.2.1 Add new sub-section 9.2.1 as follows:

§ 9.2.1 The Cash Flow Schedule shall be based on an orderly progression of the Work allowing adequate time for each operation (including adequate time for submission and review of submittals) and leading to a reasonable certainty of Substantial Completion by the date established in the Agreement. The Cash Flow Schedule will be reviewed by the Owner's Project Manager for compliance with the requirements of the Contract Documents. Unless specifically required by law, no payment under this Contract shall be due until the Cash Flow Schedule has been reviewed and approved by the Owner's Project Manager. The Owner's Project Manager's review of the Cash Flow Schedule shall not impose any duty on the Owner's Project Manager or the Owner with respect to the timing, planning, scheduling or execution of the Work. In particular if the Contractor proposes a Cash Flow Schedule indicating a date of Substantial Completion which is earlier than the Contract Time the Contractor shall not be entitled to additional payment or compensation of any kind if for any reason the full Contract Time is required to achieve Substantial Completion of the Work.

9.3.1.1 Delete sub-section 9.3.1.1.

9.3.2 Add to the end of the sub-section as follows:

The Owner may deduct the amount of such costs from payments due the Contractor.

9.4.1 Insert at the beginning of the first sentence as follows:

Subject to the Contractor's compliance with Section 9.3 and the provisions of Section 9.6,

9.5.1 Add new sub-headings .8, .9, .10, .11, and .12 as follows:

.8 failure of the Contractor or mechanical or electrical trade subcontractors to comply with requirements of the General Requirements for maintaining record drawings. The Contractor shall check record drawings each month. Written confirmation that the record drawings are current will be required by the Owner's Project Manager before approval of the Contractor's monthly payment requisition;

.9 failure of the Contractor to provide required warranties under Section 9.3, claims for direct payment, or reasonable evidence indicating probable filing of such claims;

.10 costs incurred by the Owner under Section 10.2.5;

.11 failure of the Contractor to submit prerequisite documentation required by the General Requirements; or

.12 liquidated damages due the Owner pursuant to Section 8.4.

9.5.2 Delete “Claim” and replace with “claim”.

9.5.3 Delete sub-section 9.5.3.

9.6.4 Delete “If the Contractor fails to furnish such evidence within seven days,” from the beginning of the second sentence.

9.6.5 Delete sub-section 9.6.5.

9.6.7 Delete sub-section 9.6.7.

9.6.9 Add new sub-section 9.6.9 as follows:

§ 9.6.8 Notwithstanding the provisions of Section 9.6 all progress payments shall be made in accordance with Chapter 30, Sections 39F, 39G and 39K (as appropriate) of the General Laws of the Commonwealth of Massachusetts, as amended.

9.7 Delete section 9.7.

9.8.1 Add to the end of the sub-section as follows:

In addition, Substantial Completion for the entire Project shall be achieved only when: (1) the Owner has beneficial occupancy and use of the entire Project for all its intended uses; (2) all Project systems included in the Work are operational and acceptable to the Owner; (3) all governmental inspections for the Project have been successfully completed, all governmental approvals and related paperwork have been delivered to the Owner, and final and unconditional certificates of occupancy for the entire Project have been delivered to the Owner, (4) the only remaining Work to be performed is minor in nature and the remaining Work may reasonably be performed without having a material adverse effect on or materially interfering with the Owner’s occupancy and use of the Project and (5) all prerequisites to Substantial Completion defined in the Contract Documents have been completed.

9.8.2 Add to the end of the first sentence as follows:

together with the estimated value of completing or correcting such items (the “Punchlist”) and (2) the permits and certificates referenced in Section 13.5. The Owner’s Project Manager shall have the right to modify and supplement the Punchlist, including the estimated value of completion or correction.

9.8.5 Delete sub-section 9.8.5 and replace as follows:

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor by the Owner's Project Manager. The certificate shall state the date of substantial completion, shall state any consequent responsibilities of the Contractor and the Owner in accordance with the Contract Documents. The Contractor shall complete and correct any incomplete and defective work within thirty (30) calendar days from the date of Substantial Completion

9.8.6 Add new sub-section 9.8.6 as follows:

§ 9.8.6 Services provided by the Owner's Project Manager to conduct more than one (1) inspection of completed Work and any inspections beyond thirty (30) days after the date of substantial completion of any portion of the Work as stated in the Agreement shall be paid by the Contractor to the Owner. The minimum charge is \$1,000.00 per visit to inspect the work. The Owner may deduct the cost of such services and inspections from payments due the Contractor.

9.9.1 Delete the end of the first sentence starting after "Work at any stage".

Delete the second sentence and replace as follows:

Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner has accepted in writing the responsibilities assigned to it and the Contractor for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance.

Delete the second to last sentence.

9.10.1 Add to the end of the sub-section as follows:

By Final Completion, the Contractor shall have completed its performance of all Punchlist items, completed all balancing of mechanical and other applicable systems and all seasonal system adjustments that are reasonably necessary to proper functioning of the completed Project, delivered to the Owner all operations and maintenance manuals and completed related training for such manuals, and delivered to the Owner all required warranties and guarantees.

9.10.3 Delete sub-sections 9.10.3 and 9.10.4.  
-9.10.4



9.10.5 Insert “for payment for Work performed and of all other claims of which the payee knew or should have known at the time of final payment,” after “claims by that payee”

9.10.6 Add new sub-section 9.10.6 as follows:

§ 9.10.6 Notwithstanding anything in the Contract Documents to the contrary, final payment shall be made in accordance with the requirements of G.L.c.30, §39K (building projects) or §39G (public works projects), as amended.

#### ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.2.1 Add new sub-heading .4 as follows:

.4 work or property of the Owner, its tenants, or other parties at or near the Project site with the Owner's permission.

10.2.5 At the beginning and end of the first sentence:

Delete “and” after “10.2.1.2”.

Insert “and 10.2.1.4” after “10.2.1.3”.

Delete the second sentence in its entirety.

10.2.9 Add new sub-sections 10.2.9, 10.2.10, 10.2.11, 10.2.12, and 10.2.13 as follows:  
-10.2.13

§ 10.2.9 The Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations regarding fire protection made by the representatives of the fire insurance company carrying insurance on the Work or by the local fire chief or fire marshal. The area within the site limits shall be kept orderly and clean, and all combustible rubbish shall be promptly removed from the site.

§ 10.2.10 The Contractor shall at all times protect excavations, trenches, buildings and materials from rain water, groundwater, backup or leakage of sewers, drains and other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Contractor shall provide and operate all pumps, piping and other equipment necessary to this end.

§ 10.2.11 The Contractor shall remove snow and ice which might result in damage or delay.

§ 10.2.12 During the progress of the Work and at all times prior to the date of Substantial Completion or occupancy of the Work by the Owner, whichever is earlier, the Contractor shall provide temporary heat, ventilation, and enclosure, adequate to permit the Work to proceed in a timely fashion, and to prevent damage to completed Work or Work in progress, or to materials stored on the premises. The use of the permanent heating and/or ventilation systems for temporary heat and/or ventilation shall be subject to the prior written approval of the Owner and Owner's Project Manager.

§ 10.2.13 [G.L. c.149, §44F(1)] The Contractor shall install weather protection and furnish adequate heat in the protected area from November 1 to March 31.

10.3.1 Delete the second sentence and replace as follows:

The Contractor shall not cause or permit any introduction onto, under, or near the Owner's property of any hazardous materials or substances as defined by any applicable law, and shall not cause or permit any release, discharge, transportation, storage, or disposal of such materials or substances onto, under, or near the Owner's property or areas near the Owner's property. If the Contractor encounters or recognizes on the site any material known or reasonably believed to be hazardous, including but not limited to asbestos or polychlorinated biphenyl (PCB), the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Owner's Project Manager in writing. The Contractor and the Owner shall cooperate in implementing measures to remove or contain said material and the Contractor shall comply with all directions of the Owner's Project Manager in the implementation of such removal or containment.

10.3.2 Delete sub-sections 10.3.2, 10.3.3, and 10.3.4.

10.3.5 Delete the remainder of the sentence starting after "obligations under" and replace as follows:

Article 10 or for any violation of applicable law related to the Contractor's noncompliance with the provisions of this Article 10.

10.3.6 Delete sub-section 10.3.6.

10.3.7 Add new sub-section 10.3.7 as follows:

§ 10.3.7 The parties anticipate that certain hazardous substances and/or materials may be discovered at the site. When such conditions are set forth in the Contract Documents, the Contractor acknowledges that such conditions have been considered in establishing the Contract Time and

Contract Sum. No extension of the Contract Time or increase in the Contract Sum shall be claimed or allowed with respect to any hazardous substances or materials located at the site which were disclosed in the Contract Documents. The Contractor shall strictly comply with all laws, regulations, rules, orders, ordinances and the like related to the excavation, storage, removal and disposal of any such hazardous substances or materials.

## ARTICLE 11 INSURANCE AND BONDS

11.1.1 In the last sentence insert “the Owner’s Project Manager,” after “The Owner,”.

Add the following new paragraphs to the end of Section 11.1.1:

The insurance required by this Agreement shall include all major divisions of coverage, and shall be on a comprehensive general basis including Premises and Operations (including X-C-U), Owner's and Contractor's Protective, Products and Completed Operations, and Owned, Non-owned, and Hired Motor Vehicles. Such insurance shall be written for not less than any limits of liability required by law or those set forth in the Contract Documents, whichever is greater.

All insurance shall be written on an occurrence basis, unless the Owner approves in writing coverage on a claims-made basis. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and any further period during which coverage is required to be maintained after final payment by the Contract Documents. The Owner shall be named an Additional Insured on all policies.

Coverage for such liability insurance shall be provided by a company or companies reasonably acceptable to the Owner and authorized to do business in Massachusetts. Contractor shall furnish to Owner written confirmation as to the insurance carrier's most current financial ratings prior to commencing work.

11.1.2 Delete subsection 11.1.2 and replace with the following:

§11.1.2 Contractor shall provide Performance and Payment Bonds, each in the amount of 100% of the Contract Price, and each by a surety company qualified to do business under the laws of the Commonwealth of Massachusetts and acceptable to the Owner. The attorney-in-fact who signs the bonds on behalf of the surety, must affix to each bond a certified and current copy of the power of attorney. The Performance and Payment Bonds shall be written in a form satisfactory to the Owner.

11.1.5 Add new sub-section 11.1.5:

§ 11.1.5 In no case shall the limits of liability be less than the following:

Contractor's Commercial General Liability

Bodily Injury &	\$1,000,000.00 each occurrence
Property Damage	\$2,000,000.00 general aggregate, per project

This policy shall include coverage relating to explosion, collapse, and underground property damage if blasting operations constitute part of the Work to be performed under this Contract.

Vehicle Liability

The Contractor shall provide the following minimum coverage with respect to the operations of any employee, including coverage for owned, non-owned, and hired vehicles:

Combined Single Limit:        \$2,000,000.00

Worker's Compensation

The Contractor shall provide the following coverage in accordance with M.G.L. c. 149, sec. 34A and M.G.L. c. 152 as amended, unless a higher coverage is specified below:

Part One	Provide Statutory Minimum
Employer's Liability	\$1,000,000.00 each accident
Part Two	\$1,000,000.00 disease per employee
	\$1,000,000.00 disease policy aggregate

Umbrella Liability Coverage        \$5,000,000 All Limits

11.1.3.1 The Contractor shall be responsible for having acceptable insurance coverage provided by or on behalf of all Subcontractors, with such insurance to be similar to that required of the Contractor under the Agreement and these General Conditions. The Contractor shall not allow any Subcontractor to commence Work on the Project prior to the Contractor's receipt of certificates of insurance that are acceptable in form and limits to the Owner; the Owner shall have no obligation to pay the Contractor for any Work performed by a Subcontractor who has not supplied acceptable insurance certificates prior to starting its Work. The Owner shall be named an additional insured on all such certificates.

11.1.3.2 All insurance policies shall contain provisions or endorsements necessary to assure coverage of claims by one insured against another. All required insurance policies are to be endorsed to state that the Contractor's

policies shall be primary to all other insurance available to the Owner and other specified additional insureds for liability arising out of or resulting from the Contractor's operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

11.2 Delete section 11.2 and replace as follows:

§ 11.2 OWNER'S LIABILITY INSURANCE

The Contractor shall procure and pay for an Owner's policy of Owner's protective liability insurance insuring the Owner and its officers, employees and agents against claims which may arise from operations under the Contract or relating thereto.

11.2.1 Delete sub-section 11.2.1 and replace as follows:

§ 11.2.1 The Contractor shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. Coverage for such liability insurance shall be provided by a company or companies reasonably acceptable to the Owner. Contractor shall furnish to Owner written confirmation as to the insurance carrier's most current financial ratings prior to commencing work. Such insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the work and shall insure against the perils of fire and extended coverage and shall include "all risks" insurance for physical loss or damage including without duplication, theft, vandalism and malicious mischief. This insurance shall also cover portions of the Work stored off the site or in transit. If this insurance is written with stipulated amounts deductible, the Owner shall not be responsible for any difference between the payments made by the insurance carrier and the claim. The policy shall contain a provision that coverages afforded under policies will not be canceled or allowed to expire until at least 30 days' written notice has been given to the Owner. The Owner shall be named insured within the policy.

11.2.3 Delete sub-section 11.2.3.

11.3 - Delete Section 11.3 and replace as follows:

Contractor waives all rights against (1) the Owner; (2) the Owner's Project Manager and Owner's Project Manager's consultants; and (3) the Owner's Project Manager and Owner's Project Manager's consultants for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project. The Contractor shall require similar written waivers in favor of the individuals and entities identified above from the

Contractor's subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

11.4 – Delete Section 11.4 in its entirety

11.5.1 Delete the first sentence.

11.5.2 Delete sub-section 11.5.2

11.6.11 Add new sub-section 11.6.1 as follows:

§ 11.6.11 The Owner shall have the power to adjust and settle with its insurers any loss for which it has obtained insurance.

Upon the occurrence of an insured loss, the Owner and the Contractor shall cooperate with each other and with each other's insurer in the submission of claims and related information and the distribution of any insurance proceeds. If after such a loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate change order.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

12.2.1 Add to the end of the sub-section as follows:

The Contractor shall bear the cost of any loss or damages to the Owner resulting from such failure or defect.

12.2.2.1 Delete the third sentence.

Add to the end of the sub-section as follows:

If the correction or repair of any of the Work is required to avoid impacts to the maintenance, operation or safety of any portion of the Project site or the Owner's property, the Owner reserves the right to undertake the repairs prior to notifying the Contractor or without waiting for the Contractor to respond, without waiving the Owner's rights under the warranties and the Owner's right to correct work under Section 2.4.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

- 13.1 Delete the words “by the law of”, and insert the words “Commonwealth of Massachusetts” at the end of the sentence as revised.

Delete the second sentence.

- 13.2.1 In the second sentence delete “Except as provided in Section 13.2.2”.

- 13.2.2 Delete sub-section 13.2.2.

- 13.4.4 Delete sub-section 13.5.4 and replace as follows:

§ 13.5.4 The Contractor shall obtain and deliver promptly to the Owner’s Project Manager any occupancy permit and any certificates of final inspection of any part of the Contractor’s work and operating permits for any mechanical apparatus, such as elevators, escalators, boilers, air compressors, etc., which may be required by law to permit full use and occupancy of the premises by the Owner. Receipt of such permits or certificates by the Owner’s Project Manager shall be a condition precedent to Substantial Completion of the Work.

- 13.7.1 Add new sub-section 13.7.1 as follows:

§ 13.7.1 It is expressly agreed that the obligations of the Contractor hereunder arise out of contractual duties, and that the failure of the Contractor to comply with the requirements of the Contract Documents shall constitute a breach of contract, not a tort, for the purpose of applicable statutes of limitation and repose. Any cause of action which the Owner may have on account of such failure shall be deemed to accrue only when the Owner has obtained actual knowledge of such failure, not before.

- 13.8 Add new section 13.8 as follows:

### § 13.8 LIMITATION OF LIABILITY

§ 13.8.1 The Owner shall be liable, if ever, only to the extent of its interest in the Project; and no officer, director, partner, agent or employee of the Owner shall ever be personally or individually liable with respect to this Contract or the Work. Each Subcontract shall include the foregoing limitation, which shall be effective if the Owner ever succeeds to the Contractor’s rights and obligations under a Subcontract.

- 13.9 Add new section 13.9 as follows:

## § 13.9 DEFENSE OF SUITS

§ 13.9.1 The Contractor shall be responsible for, shall defend and pay all costs, attorneys' fees and liabilities both direct and indirect as a result of suits arising out of this Contract.

§ 13.9.2 Neither final acceptance nor occupation of the premises by the Owner shall relieve the Contractor of responsibility for all claims for labor, materials, and equipment arising out of this Contract.

§ 13.9.3 The Contractor shall indemnify and hold harmless the Owner and the Owner's Project Manager and their agents and employees from and against all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting from the performance of the work.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1.1 Insert in the beginning of the first sentence as follows:

Provided that the Contractor is not in breach of any of its obligations under the Contract,

Delete sub-headings .1, .2, and .4.

14.1.2 Delete sub-section 14.1.2.

14.1.3 Delete sub-section 14.1.3 and replace as follows:

§ 14.1.3 If one of the above reasons exists, the Contractor may, upon seven days written notice to the Owner and Owner's Project Manager, terminate the Contract and recover from the Owner payment for Work properly executed and for all materials or equipment not incorporated in the Work, but delivered and suitably stored at the site. The payment for materials or equipment stored at the site shall be conditioned upon submission by the Contractor of bills of sale or such other evidence as is satisfactory to the Owner to establish the Owner's title to such material or equipment or otherwise protect the Owner's interest.

14.1.4 Delete sub-section 14.1.4.

14.2.1 Delete "repeatedly" from the beginning of sub-headings .1 and .3.

Insert new sub-headings .4 and .5 after sub-heading .3 as follows:



.4 becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding related to insolvency, receivership, liquidation or comparable proceeding or any assignment for the benefit of creditors or becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding related to insolvency, receivership, liquidation or comparable proceeding or any assignment for the benefit of creditors.

.5 submits three successive Applications for Payment, each of which indicate that the actual Work completed is less than 90 percent of the values estimated in the construction schedule (submitted by the Contractor pursuant to Section 3.10.1) to be completed by the respective dates.

14.2.2 In the first sentence delete “, and upon certification by the Owner’s Project Manager that sufficient cause exists to justify such action,”.

Delete the second sentence of sub-heading .3.

14.2.4 In the first sentence:

Insert “all costs and losses incurred by the Owner on account of the Contractor’s failure to comply with the Contract Documents and” after “the Work, including”.

Insert “and Owner’s Project Manager’s” after “for the Owner’s Project Manager’s”. Delete the last sentence of the sub-section and replace as follows:

The Owner shall be entitled to hold all amounts due the Contractor at the date of termination until all of the Owner’s damages have been established, and to apply such amounts to such damages.

14.3.2 Insert “, subject to compliance with the conditions of Section 8.3.” at the end of the first sentence.

Delete the second sentence.

14.4.2 In sub-heading .3 delete “and” after “all existing contracts” and replace with “except for subcontracts, if any, that Owner elects to assume, terminate all”

14.4.3 Delete sub-section 14.4.3 and replace as follows:

§ 14.4.3 In the event that the Contract is terminated for the Owner’s convenience, the Contractor shall be reimbursed in accordance with the Contract Documents for all Work properly performed up to the termination date, and for all materials or equipment not incorporated in the Work, but delivered and suitably stored at the site. Payment for materials or equipment stored at the site shall be conditioned upon

submission by the Contractor of bills of sale or such other evidence as is satisfactory to the Owner to establish the Owner's title to such material or equipment or otherwise protect the Owner's interest. The Contractor shall not be entitled to payment for overhead and profit on the Work not executed.

## ARTICLE 15 CLAIMS AND DISPUTES

15.1.1 Delete sub-section 15.1.1 and replace as follows:

### § 15.1.1 DEFINITION

The word “Claim” shall mean a written demand by the Contractor for an increase in the Contract Time or the Contract Sum. The Contractor is responsible for substantiating its Claims. The word “Claim” shall not include claims by the Owner. The Owner may withhold from the Contractor the value of any claims against the Contractor in accordance with Massachusetts General Laws, including, but not limited to, Sections 39G and 39K of Chapter 30.

15.1.2 Delete subsection 15.1.2

15.1.3 Delete sub-section 15.1.3 and replace as follows:

### § 15.1.3 NOTICE OF CLAIMS

Contractor must initiate Claims within fourteen (14) calendar days after occurrence of the event giving rise to such Claim by written notice to the Owner’s Project Manager and the Owner. Such written notice must (1) be signed by the Contractor; (2) conspicuously identify on its face that the notice serves as a notice of claim; (3) explain in sufficient detail the basis of the Claim; (4) identify the date of the event giving rise to such Claim; and (5) state the exact dollar amount of the increase in the Contract Sum being requested, if any, and the number of days extension to the Contract Time sought, if any.

15.1.3.2 Delete subsection 15.1.3.2

15.1.4 Delete “Section 9.7 and” after “as provided in”.

15.1.4.2 Delete subsection 15.1.4.2

15.1.6.1 In the second sentence delete “of cost and” after “include an estimate”.

15.1.6.2 Delete sub-section 15.1.5.2.

15.1.7 Delete sub-section 15.1.7.

15.2.1 Delete the capitalized word, “Claim,” and replace with lower-case word, “claim,” in the first and fourth sentences.

In the third sentence:

Delete “mediation” after “condition precedent to” and replace with “litigation”.

15.2.2 Delete sub-section 15.2.2 and replace as follows:

§ 15.2.2 The Initial Decision Maker will review Claims and within 30 days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the Contractor; (2) notify the Contractor that the Initial Decision Maker requires additional time to resolve the Claim; and/or (3) reject the Claim in whole or in part.

15.2.3 Delete the last sentence.

15.2.4 Delete sub-section 15.2.4 and replace as follows:

§ 15.2.4 If the Owner’s Project Manager requests the Contractor to furnish additional supporting data in connection with a Claim, the Contractor shall provide such data within ten (10) calendar days of such request. If the Contractor is of the opinion that it is impossible to provide such data within such time, the Contractor shall notify the Owner’s Project Manager of such opinion in writing within such ten-day period. If the Owner’s Project Manager determines that it is impossible for such data to be provided within such ten-day period through no fault of the Contractor, the Contractor shall provide such data within 30 calendar days of the Owner’s Project Manager’s request, unless the Owner’s Project Manager fixes another date, in which case the data must be submitted by the date so fixed. Failure of the Contractor to provide such data within the time prescribed herein shall result in the irrevocable waiver of the Claim.

15.2.5 Delete the last sentence and replace as follows:

The rejection of a claim by the Owner’s Project Manager and any decisions of the Owner with respect to the same, and the interpretations by the Owner’s Project Manager of the plans, drawings and specifications, shall be final and binding on the Contractor in accordance with Section 39J of Chapter 30 of the Massachusetts General Laws.

15.2.6 Delete sub-section 15.2.6 in its entirety.

15.2.7 Delete the capitalized word, “Claim,” and replace with lower-case word, “claim,”

in the first and second sentences.

15.2.8 Delete sub-section 15.2.8.

15.3 Delete sections 15.3 and 15.4 in their entirety.

-15.4

DOCUMENT 00 73 10  
SPECIAL CONDITIONS

1.01 MASSACHUSETTS GENERAL LAWS

- A. The following lists certain sections of the Massachusetts General Laws applicable to this Project, which shall be included in this Contract as if written out in full.

<u>Subject</u>	<u>Statute or Executive Order</u>
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PAYMENT, CONTRACT ADMINISTRATION, ETC.

"or Equal" Clause	M.G.L. Chapter 30 Section 39 M(b)
Delays	M.G.L. Chapter 30 Section 39 O
Deviations	M.G.L. Chapter 30 Section 39 I
Finality of Decisions	M.G.L. Chapter 30 Section 39 J
Differing Site Conditions	M.G.L. Chapter 30 Section 39 N
Timely Decisions	M.G.L. Chapter 30 Section 39 P
Certificate of Appropriation	M.G.L. Chapter 30 Section 39 C
Method of Payment (Public Building Projects)	M.G. L. Chapter 30 Section 39 K
Method of Payment (Public Works Projects)	M.G.L. Chapter 30 Section 39 G
Direct Payment	M.G.L. Chapter 30 Section 39 F
Discharge of Release of Bonds	M.G.L. Chapter 30 Section 40

WAGES AND EMPLOYMENT PRACTICES

Preference to Veterans and Citizens	M.G.L. Chapter 149 Section 26
Determination of Wage Rates	M.G.L. Chapter 149 Section 27
Employment Records	M.G.L. Chapter 149 Section 27B
Wages Paid to Operators of Trucks and Other Equipment	M.G.L. Chapter 149 Section 37 F
Reserve Police Officers	M.G.L. Chapter 149 Section 34 B
Eight-Hour Day, etc.	M.G.L. Chapter 149

Sections 30, 34 and 34 A

Lodging, etc.

M.G.L. Chapter 149  
Section 25

Access to Contractor's Records

Executive Order No. 195

Worker's Compensation Insurance

M.G.L. Chapter 149,  
Section 34

#### CONTRACTOR'S ACCOUNTING METHODS

Contractor's Accounting Method  
Requirements

M.G.L. Chapter 149  
Section 39 R

#### MISCELLANEOUS

Weather Protection

M.G.L. Chapter 149,  
Section 44 F (I)

Form for Sub-Contract

M.G.L. Chapter 149,  
Section 44 (F) (4) (C)

Foreign Corporations

M.G.L. Chapter 181,  
Section 3.5; Chapter 30, Section 39.L

Shoring

M.G.L. Chapter 149  
Section 129 A

Compliance with Tax Laws

M.G.L. Chapter 62 C  
Section 49 A

#### 1.02 EQUAL OPPORTUNITY, AFFIRMATIVE ACTION POLICY

A. The following Special Conditions are requirements of the Town of Northbridge, Massachusetts, and apply to performance and procedures of Contractor and all subcontractors, suppliers, and others providing labor, material, equipment and services to the Project, regardless of tier. Copies of all referenced policies are available from the Town of Northbridge.

1. The Town of Northbridge is an Equal Opportunity, Affirmative Action Employer and encourages participation from minority and women-owned contractors and businesses. A copy of the Town of Northbridge Affirmative Action Program is available as if bound herein.

a. The Contractor shall maintain on this Project a not less than 5% ratio of minority employee worker hours to total worker hours in each job category including but not limited to brick-layers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those "classes of work" enumerated in Section 44C of Chapter 149 of the Massachusetts General Laws.

#### 1.03 DEFINITIONS – OWNER AND OWNER'S PROJECT MANAGER

A. Wherever the term "Owner" is used in this specification, it refers to

Town of Northbridge  
7 Main St.  
Whitinsville, MA 01588

1. The terms “Owner” and “Awarding Authority” as used in the Project Manual have the same meaning and are interchangeable in the Contract Documents. Both terms refer to the same entity.
  2. Important Tax Note: OWNER is exempt from **certain taxes**. It is therefore required that the Contractor and Subcontractors purchasing taxable goods or services make known to suppliers that tax-exempt status of the Owner, in order that such taxes will not be applied to goods under Contract. In the event that such taxes are paid on any items, the Contractor shall obtain rebates for the taxes and reimburse the Owner in the full amount by change order. The Owner will provide the necessary evidence and certificates of its tax-exempt status upon request of those concerned. The most prevalent taxes concerned are:
    - a. Federal Excise Taxes as applied to articles which are taxable under Chapter 32 of the Internal Revenue Code of 1954, as amended. The Owner’s Excise Tax Exemption Certificate Number is applicable.
    - b. Sales and Use Tax imposed by the Commonwealth of Massachusetts: The Owner has been assigned Exemption Certificate Number with respect to leases, rental or purchase of “tangible personal property”, including building materials and supplies, subject to Massachusetts Sales and Use Tax. This exemption does not apply to any equipment leased or rented by the Contractor for their own use on the construction of the Project.
    - c. Sales and Use Tax imposed by the states where the Owner does not have exemption status: The Owner may choose to apply for tax exemption status in other states where major building materials and supplies are being purchased. In the event that the Owner obtains exemption status after bids are received, the Contractor shall adjust the Stipulated Sum by change order, for the amount equal to the scheduled taxes that were included in the Contractor’s Bid.
  3. All papers required to be delivered to the Owner shall, unless otherwise specified in writing to the contrary, be delivered to the office of the Owner’s Project Manager.
- B. Wherever the term “Owner’s Project Manager” or “Owner’s Representative” is used in the Contract Documents, it refers to: Turning Point Engineering.

END OF DOCUMENT

SECTION 00 73 43

WAGE RATE SCHEDULES

1.01 STATE WAGE RATES

- A. The classifications and wage rates as established by the Commonwealth of Massachusetts Department of Labor and Industries are hereby made a part of this Contract.
- B. Wage rates included in the Contract Documents are minimum wage rates.

1.04 OSHA APPROVED SAFETY AND HEALTH TRAINING

- A. Current Massachusetts law requires all employees who work on public construction sites must have no less than 10 hours of OSHA approved safety and health training.
  - 1. The contractor and all subcontractors on this project will be required to provide certification of their compliance with this requirement with the first certified payroll report for each employee.

END OF DOCUMENT